

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Bostwick Laboratories, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10570 (BLS)

(Jointly Administered)

**DEBTORS' COMBINED PLAN AND DISCLOSURE STATEMENT FOR BOSTWICK
LABORATORIES, INC. AND BOSTWICK LABORATORIES HOLDINGS, INC.**

Dated: August 1, 2017

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¹ The Debtors are the following entities (last four digits of EIN in parentheses): (i) Bostwick Laboratories, Inc., a Delaware corporation (3169); and (ii) Bostwick Laboratories Holdings, Inc., a Delaware corporation (1042). The mailing address for the Debtors is 100 Charles Lindbergh Blvd., Uniondale, NY 11553.

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THIS COMBINED PLAN AND DISCLOSURE STATEMENT WAS SUBSTANTIALLY COMPILED FROM THE DEBTORS' BOOKS AND RECORDS TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION AND BELIEF.

UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11 OF THE BANKRUPTCY CODE. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

THIS COMBINED PLAN AND DISCLOSURE STATEMENT PROVIDES FOR THE SUBSTANTIVE CONSOLIDATION OF THE ASSETS AND LIABILITIES OF THE DEBTORS FOR CERTAIN PURPOSES AND CONTEMPLATES THE APPOINTMENT OF A PLAN ADMINISTRATOR TO WIND-DOWN THE DEBTORS' ESTATES.

NO REPRESENTATION CONCERNING THE DEBTORS OR THE VALUE OF THE DEBTORS' ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE STATEMENT APPROVED BY THE BANKRUPTCY COURT. THE DEBTORS ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN OR INCONSISTENT WITH INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTORS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN. HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

FOR EASE OF REFERENCE ONLY, AND WITH CERTAIN EXCEPTIONS, ARTICLE I THROUGH ARTICLE V HEREIN GENERALLY CONTAIN THE DISCLOSURE STATEMENT PROVISIONS AND ARTICLE VI THROUGH ARTICLE XVIII HEREIN GENERALLY CONTAIN THE PLAN PROVISIONS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.

INTRODUCTION

The Debtors propose a joint plan of liquidation for the resolution of all outstanding Claims against and Equity Interests in the Debtors as of the Petition Date. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in Article I.B hereof.

The Combined Plan and Disclosure Statement constitutes a liquidating Chapter 11 plan for the Debtors and provides for Distribution of the Debtors' assets already liquidated or to be liquidated over time to Holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the priority provisions of the Bankruptcy Code. The Combined Plan and Disclosure Statement contemplates the appointment of a Plan Administrator, *inter alia*, to implement the terms of the Combined Plan and Disclosure Statement and make distributions in accordance therewith. Except as otherwise provided by Order of the Bankruptcy Court, Distributions will likely occur at various intervals after the Effective Date.

The Combined Plan and Disclosure Statement provide for limited substantive consolidation of the assets and liabilities of the Debtors. Accordingly, for purposes of the Combined Plan and Disclosure Statement only, the assets and liabilities of the Debtors are deemed the assets and liabilities of a single administratively consolidated entity. Claims filed against both Debtors seeking recovery of the same debt shall be treated as a single, non-aggregated Claim against the consolidated Estates to the extent that such Claim is an Allowed Claim.

The Debtors are proponents of the plan contained herein within the meaning of section 1129 of the Bankruptcy Code.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 9019, the Debtors expressly reserve the right to alter, amend or modify the Combined Plan and Disclosure Statement one or more times before substantial consummation thereof.

ARTICLE I.

DEFINED TERMS AND RULES OF INTERPRETATION

A. Rules of Interpretation and Construction

1. For purposes herein: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) any reference herein to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (iii) any reference to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented; (iv) unless otherwise specified, all references to “Articles” or “Sections” are references to Articles or Sections hereof; (v) the words “herein,” “hereof” and “hereto” refer to the Combined Plan and Disclosure Statement in its entirety rather than to a particular portion of the Combined Plan and Disclosure Statement; (vi) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (vii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (viii) any term used in capitalized form herein that is not otherwise defined shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

B. Defined Terms

Unless the context otherwise requires, the following capitalized terms used in this Combined Plan and Disclosure Statement shall have the meanings set forth below:

1. **“Accrued Professional Compensation”** means, at any date, all accrued fees and reimbursable expenses for services rendered by Retained Professionals in the Chapter 11 Cases through and including such date, to the extent that such fees and expenses have not been previously paid and regardless of whether a fee application has been filed for such fees and expenses. To the extent that there is a Final Order denying some or all of a Retained Professional’s fees or expenses, such denied amounts shall no longer be considered Accrued Professional Compensation.

2. **“Administrative Expense Claim”** means a Claim for costs and expenses of administration under sections 503(b), 507(a), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors, (b) Professional Fee Claims (to the extent Allowed by the Bankruptcy Court), and (c) Statutory Fee Claims.

3. **“Affiliate”** means, with respect to any Entity, “affiliate” as defined in section 101(2) of the Bankruptcy Code.

4. **“Agent”** means Healthcare Financial Solutions, LLC, a wholly owned Affiliate of Capital One, N.A.

5. **“Allowed”** means, with reference to any Claim (i) any Claim against the Debtors which has been listed by the Debtors in their Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed; (ii) any Claim or Equity Interest arising on or before the Effective Date for which a Proof of Claim has been timely Filed before the applicable Bar Date (x) as to which no objection to allowance has been interposed in accordance with this Combined Plan and Disclosure Statement or (y) as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder, (iii) any Claim or Equity Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, or (iv) any Claim expressly Allowed hereunder or pursuant to an Order of the Bankruptcy Court; provided, however, that Claims allowed solely for the purpose of voting to accept or reject the Combined Plan and Disclosure Statement pursuant to an Order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder. Unless otherwise specified herein or by order of the Bankruptcy Court, “Allowed Administrative Expense Claim” or “Allowed Claim” shall not, for any purpose under the Combined Plan and Disclosure Statement, include interest, punitive damages or any fine or penalty on such Administrative Expense Claim or Allowed Claim from and after the Petition Date. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any claim which the Debtors may hold or assert against the Holder thereof, to the extent such claim may be set off pursuant to sections 502(d) or 553 of the Bankruptcy Code.

6. **“Amended Schedules Bar Date”** means the later of (a) the General Bar Date and (b) 5:00 p.m. (prevailing Eastern Time) on the date that is 21 days after the Debtors provides notice to the Holder of an amendment to the Debtors’ Schedules.

7. **“Available Cash”** means all Cash of Debtors’ Estates to be distributed to the Holders of Allowed Claims in accordance with the Combined Plan and Disclosure Statement, including those net recoveries realized from the prosecution and/or settlement of Causes of Action held by Debtors less (i) the Estimated Liquidation Expenses and (ii) the amount of Cash to be retained for the payment of Disputed Claims, from time to time; provided, however, that Available Cash shall not include collateral security or any proceeds of Collateral securing any Allowed Secured Claims.

8. **“Avoidance Actions”** means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation has been commenced as of the Effective Date to prosecute such Claims or Causes of Action.

9. **“Ballot”** means the ballot forms distributed with the Combined Plan and Disclosure Statement to Holders of Impaired Claims entitled to vote in connection with the solicitation of acceptances of the Combined Plan and Disclosure Statement.

10. **“Bankruptcy Code”** means title 11 of the United States Code, 11U.S.C. §§ 101-1532.

11. **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over these Chapter 11 Cases.

12. **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure,

13. **“Bar Date Order”** means the *Order Establishing Bar Dates and Procedures and Approving the Form and Manner of Notice Thereof* entered in the Chapter 11 Cases by the Bankruptcy Court on May 22, 2017 [Docket No. 290].

14. **“Bar Dates”** means those dates and times defined as the Bar Dates in Article II.B.5(c) and in the Bar Date Order.

15. **“Bidding Procedures Order”** means the *Order (i) Authorizing and Approving Bidding Procedures, Break-Up Fee and Expense Reimbursement, (ii) Authorizing and Approving the Debtors’ Performance of Pre-Closing Obligations Under the Stalking Horse Asset Purchase Agreement, (iii) Approving Notice Procedures, (iv) Scheduling Sale Hearing and (v) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Determining Cure Amounts* entered in the Chapter 11 Cases by the Bankruptcy Court on April 3, 2017 [Docket No. 114].

16. **“BLI”** means Bostwick Laboratories, Inc.

17. **“BLHI”** means Bostwick Laboratories Holdings, Inc.

18. **“Books and Records”** means those books, records and financial systems of the Debtors, including any and all documents and any and all computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtors maintained by or in the possession of third parties, wherever located.

19. **“Business Day”** means any day, other than a Saturday, Sunday or “legal holiday” (as that term is defined in Bankruptcy Rule 9006(a)), which commercial banks in Wilmington, Delaware are required or authorized to close by law or executive order, and the Friday after Thanksgiving.

20. **“Cash”** means the legal tender of the United States of America or the equivalent thereof.

21. **“Causes of Action”** means all actions, causes of action, liabilities, obligations, rights, suits, debts, damages, judgments, remedies, demands, setoffs, defenses, recoupments, cross-claims, counterclaims, third-party claims, indemnity claims, contribution claims or any

other claims whatsoever, in each case held by the Debtors, whether disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date, or during the course of the Chapter 11 Cases through the Effective Date including, but not limited to, those causes of action listed on the Causes of Action List. Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim for breaches of duties imposed by law or in equity; (b) the Avoidance Actions; (c) any Claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (d) any state law fraudulent transfer claim.

22. **“Causes of Action List”** means the non-exclusive list of Causes of Action attached hereto as **Exhibit A**.

23. **“Certificate”** means any instrument evidencing a Claim or an Equity Interest.

24. **“Chapter 11 Cases”** means (a) when used with reference to a particular Debtor, the Chapter 11 case filed for that Debtor under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to both Debtors, the jointly administered Chapter 11 Cases for both Debtors.

25. **“Claim”** means any claim as defined in section 101(5) of the Bankruptcy Code against a Debtor.

26. **“Claims Objection Deadline”** means the first Business Day that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by Order of the Bankruptcy Court upon motion of the Plan Administrator.

27. **“Class”** means a category of Holders of Claims or Equity Interests as set forth in Article IX hereof pursuant to section 1122(a) of the Bankruptcy Code.

28. **“Clerk”** means the clerk of the Bankruptcy Court.

29. **“Combined Plan and Disclosure Statement”** means this combined disclosure statement and Chapter 11 plan of liquidation, including, without limitation, all exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time.

30. **“Committee”** means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

31. **“Confirmation”** means the entry of the Confirmation Order by the Bankruptcy Court on the Docket of the Chapter 11 Cases.

32. **“Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order on the Docket of the Chapter 11 Cases.

33. **“Confirmation Hearing”** means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

34. **“Confirmation Order”** means the Order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code.

35. **“Confirmation Notice”** means the notice to be provided to all Creditors and parties in interest regarding the Confirmation Hearing, which notice shall contain instructions for obtaining a copy of the Combined Plan and Disclosure Statement.

36. **“Creditor”** means any Entity that is the Holder of a Claim against either of the Debtors.

37. **“Debtor(s)”** means BLI and BLHI, individually or collectively.

38. **“DIP Credit Agreement”** means the debtor-in-possession credit agreement, dated March 15, 2017, by and between BLI, as borrower, and Poplar Healthcare, as lender.

39. **“Disbursing Agent”** means the Plan Administrator; provided, however, that the Post-Effective Date Debtors or Plan Administrator may, in their discretion, retain a third party to act as Disbursing Agent.

40. **“Disputed”** means every Claim which (i) has been or hereafter is listed in the Debtors’ Schedules as unliquidated, disputed or contingent; (ii) is disputed under the Combined Plan and Disclosure Statement or under applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order; (iv) the Debtors have interposed a timely objection or request for estimation in accordance with section 502(c) of the Bankruptcy Code or Bankruptcy Rule 3018, which objection or request for estimation has not been withdrawn, overruled or determined by a Final Order; (v) was required to be filed by Order of the Bankruptcy Court but as to which a Proof of Claim was not timely or properly filed; and (vi) is designed on a Proof of Claim as unliquidated, contingent, or disputed, or in zero or unknown amount, that has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court. A Claim that is Disputed by the Debtors as to its amount only, shall be deemed Allowed in the amount the Debtors admit is owing, if any, and Disputed as to the excess.

41. **“Distribution”** means any distribution to the Holders of Allowed Claims.

42. **“Distribution Record Date”** means the date of the Confirmation Hearing or such other date as designated in an Order of the Bankruptcy Court.

43. **“Docket”** means the docket in the Chapter 11 Cases maintained by the Clerk.

44. **“DOJ”** means the Department of Justice.

45. **“Effective Date”** means a Business Day selected by the Debtors in their discretion after all conditions specified in Article XVI.C have been satisfied or waived.

46. **“Entity”** has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

47. **“Equity Interest”** means any issued, unissued, authorized, or outstanding shares of common stock, preferred stock, membership interest or other instrument evidencing an ownership interest in a Debtor, whether or not transferable, together with any warrants, equity-based awards or contractual rights to purchase or acquire such equity interests at any time and all rights arising with respect thereto that existed immediately before the Effective Date.

48. **“Estate”** means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

49. **“Estimated Liquidation Expenses”** means the amount of Cash estimated by the Plan Administrator, from time to time, as necessary to fund adequately on and after the Effective Date (i) the liquidation of the Post-Effective Date Debtors’ remaining assets; (ii) the wind up of the Post-Effective Date Debtors’ business affairs and (iii) the administration of the Combined Plan and Disclosure Statement and the Chapter 11 Cases.

50. **“Executory Contract”** means a contract, as it may have been amended, restated or otherwise modified and including any codicils, amendments, exhibits or annexes thereto, if any, to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

51. **“Exculpated Parties”** means, collectively, (i) the Debtors and their Estates, (ii) the current and former officers, directors and managers of the Debtors (iii) employees or agents of the Debtors, (iv) the Committee and its members and (v) attorneys, financial advisors, accountants, investment bankers, investment advisors, consultants, agents, representatives and other professionals of the Debtors and the Committee.

52. **“File,” “Filed” or “Filing”** means filed, filed or filing with the Bankruptcy Court in the Chapter 11 Cases.

53. **“First Lien Revolver”** means that certain revolving loan facility, dated September 17, 2012, by and between General Electric Capital Corporation and BLI, as amended under which the Agent became the successor to GE Capital Corporation.

54. **“Final Fee Application”** means an application for final allowance of Accrued Professional Compensation.

55. **“Final Order”** means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction, with respect to the subject matter, as entered on the Docket in the Chapter 11 Cases or the docket of any court of competent jurisdiction, and as to which the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, seek a new trial, reargument, or rehearing and, where applicable, petition for certiorari has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was

sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; provided, however, that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024, or any analogous rule, may be filed relating to such order or judgment shall not cause such order or judgment not to be a Final Order.

56. **“General Administrative Expense Claim”** means any Administrative Expense Claim, other than a Professional Fee Claim or a Statutory Fee Claim.

57. **“General Bar Date”** means June 27, 2017 at 5:00 p.m. (prevailing Eastern Time).

58. **“General Unsecured Claims”** means any Claim (other than an Administrative Expense Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Secured Claim, a Secured Tax Claim, or an Intercompany Claim) asserted as unsecured against the Debtors including, but not limited to Claims arising from any litigation or other court, administrative or regulatory proceeding, including, without limitation, damages or judgments entered against, or settlement amounts owing by a Debtor related thereto.

59. **“Government Bar Date”** means September 11, 2017 at 5:00 p.m. (prevailing Eastern Time).

60. **“Governmental Unit”** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

61. **“Holder”** means the beneficial holder of a Claim or Equity Interest.

62. **“Impaired”** means, with reference to any Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

63. **“Insider”** has the meaning ascribed to such term in section 101(31) of the Bankruptcy Code.

64. **“Insider Litigation Claims”** means all Causes of Action against Insiders of the Debtors.

65. **“Insurance Policies”** means all insurance policies of the Debtors.

66. **“Intercompany Claims”** means, collectively, any Claim held by a Debtor against another Debtor.

67. **“Leerink”** means Leerink Partners LLC.

68. **“Lien”** has the meaning ascribed to that term in section 101(37) of the Bankruptcy Code.

69. **“Local Bankruptcy Rules”** means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware and the general and chambers rules of the Bankruptcy Court.

70. **“Metalmark”** means (i) Metalmark Capital Partners II Executive Fund, L.P.; (ii) Metalmark Capital Partners Cayman II, L.P.; (iii) Metalmark Capital Partners II, L.P.; (iv) Metalmark Capital Partners TE II, L.P. and (v) Metalmark Capital Partners II Co-Investment, L.P..

71. **“OCP Order”** means the *Order Authorizing Debtors to Retain and Compensate Professionals Used in the Ordinary Course of Business* entered in the Chapter 11 Cases by the Bankruptcy Court on June 13, 2017 [Docket No. 319].

72. **“Order”** means an order or judgment of the Bankruptcy Court, as entered on the Docket.

73. **“Oversight Committee”** shall have the meaning set forth in Article X.B

74. **“Person”** has the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

75. **“Petition Date”** means March 15, 2017, the date on which the Debtors Filed their respective petitions for relief commencing the Chapter 11 Cases.

76. **“Plan Administrator”** means James Patrick Carroll of Carroll Services LLC, as representative of the Debtors and their estates from and after the Effective Date for purposes of administering and consummating the Plan, or any successor thereto.

77. **“Plan Documents”** means this Combined Plan and Disclosure Statement and all of the exhibits, schedules and other documents attached hereto or Filed in connection herewith.

78. **“Plan Supplement”** means the compilation of documents and form of documents, schedules and exhibits to be Filed on or before ten (10) days prior to the Voting Deadline and which may be amended from time to time until Confirmation.

79. **“Post-Effective Date Debtors”** means the Debtors on and after the Effective Date.

80. **“Poplar Healthcare”** means Poplar Healthcare, PLLC.

81. **“Postpetition Interest”** means interest, commencing on the Petition Date, on the then outstanding principal amount of an Allowed Claim, at an annual rate equal to the federal judgment rate in effect on the Petition Date.

82. **“Priority Claims”** means, collectively, Priority Non-Tax and Priority Tax Claims.

83. **“Priority Non-Tax Claim”** means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim.

84. **“Priority Tax Claim”** means a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

85. **“Proof of Claim”** means a timely Filed proof of Claim Filed against either Debtor in the Chapter 11 Cases.

86. **“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion of a particular recovery that a Class is entitled to share with other Classes entitled to the same recovery under the Combined Plan and Disclosure Statement.

87. **“Professional Fee Claims”** means Claims for Accrued Professional Compensation.

88. **“Rejection Claim”** means a Claim arising out of the rejection of Unexpired Leases or Executory Contracts to which a Debtor is a party.

89. **“Rejection Claim Bar Date”** means the later of (a) the General Bar Date, and (b) 5:00 p.m. (prevailing Eastern Time) on the date that is 35 days following the entry of an Order approving the rejection of an Executory Contract or Unexpired Lease.

90. **“Released Parties”** means, collectively, (i) the Debtors and their Estates, (ii) employees or agents of the Debtors, (iii) the Committee and its members and (iv) attorneys, financial advisors, accountants, investment bankers, investment advisors, consultants, agents, representatives and other professionals of the Debtors and the Committee. The definition of Released Parties shall not include the current or former officers, directors and managers of the Debtors including, without limitation, Dr. David G. Bostwick or anyone, whether or not a Released Party, currently or previously associated with, affiliated with or employed by Metalmark.

91. **“Retained Assets”** means the Retained Assets as defined in Section 2.1(c) of the Stalking Horse APA.

92. **“Retained Professional”** means an Entity employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

93. **“Sale Motion”** means the *Debtors’ Combined Motion for Entry of (I) An Order (A) Authorizing and Approving Bidding Procedures, Break-Up Fee and Expense Reimbursement, (B) Authorizing and Approving the Debtors’ Performance of Pre-Closing Obligations Under the Stalking Horse Asset Purchase Agreement, (C) Approving Notice Procedures, (D) Scheduling a Sale Hearing and (E) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Determining Cure Amounts; and (II) An Order (A) Authorizing and Approving the Sale of Substantially all of the Debtors’ Assets Free and*

Clear of All Claims, Liens, Rights, Interests and Encumbrances, (B) Approving the Asset Purchase Agreement and (C) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases filed in the Chapter 11 Cases on March 15, 2017 [Docket No. 15].

94. **“Sale Order”** means the *Order (I) Authorizing and Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of all Claims, Liens, Rights, Interests and Encumbrances, (II) Approving the Asset Purchase Agreement and (Iii) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* entered in the Chapter 11 Cases by the Bankruptcy Court on April 28, 2017 [Docket No. 228].

95. **“Schedules”** means the Schedules of Assets and Liabilities and the Statement of Financial Affairs filed by the Debtors on May 19, 2017 [Docket Nos. 284, 285, 286 and 287] and any and all amendments and modifications thereto.

96. **“Second Lien Notes”** means the notes in the approximate amount of \$950,000 issued by the Debtors under that certain Note Purchase Agreement, dated February 21, 2017, to certain “Purchasers” as defined in the Note Purchase Agreement.

97. **“Secured Claim”** means any Claim held by a landlord, lessor, utility or other third party that is secured by a Lien on property in which the Estates have an interest, to the extent of the value of the Holder’s interest in the Estates’ interest in such property, as determined in accordance with section 506(a) of the Bankruptcy Code, or, in the event that such Claim is subject to a permissible setoff under section 553 of the Bankruptcy Code, to the extent of such permissible setoff.

98. **“Secured Tax Claim”** means any Secured Claim of a Governmental Unit arising from unpaid taxes that is secured by a Lien on property arising from operation of a statute.

99. **“Stalking Horse APA”** means that certain Asset Purchase Agreement, dated March 13, 2017, by and between Poplar Healthcare and BLI, as amended on March 20, 2017.

100. **“Statutory Fees”** means any and all fees payable to the United States Trustee pursuant to section 1930 of title 28 of the United States Code and any interest thereupon.

101. **“Supplemental General Administrative Claims Bar Date”** means the deadline for filing Administrative Expense Claims arising or accruing during the Supplemental General Administrative Claims Period (other than Professional Fee Claims), which shall be the Business Day that is thirty (30) days after the Effective Date. On or before the Supplemental General Administrative Claims Bar Date, all Holders of Administrative Expense Claims shall File with the Court and serve the Debtors, the Post-Effective Date Debtors and Plan Administrator, as applicable, requests for payment, in writing, together with supporting documents, substantially complying with the Bar Date Order, the Bankruptcy Code, the Bankruptcy Rules and Local Rules.

102. **“Supplemental General Administrative Claim Period”** means the period commencing on May 5, 2017 and ending on the Effective Date.

103. **“Unclaimed Distribution”** means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

104. **“Unclaimed Distribution Deadline”** means the date that is sixty (60) days from the date the Plan Administrator makes a Distribution under this Combined Plan and Disclosure Statement to a Holder of an Allowed Claim.

105. **“Unexpired Lease”** means a lease, as it may have been amended, restated or otherwise modified and including any codicils, amendments, exhibits or annexes thereto, if any, to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

106. **“Unimpaired”** means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

107. **“United States”** means the United States of America.

108. **“United States Trustee”** means the United States Trustee for Region 3.

109. **“Unsecured Notes”** means approximately \$40,000,000 in aggregate principal amount of unsecured notes issued by BLI under a series of note purchase agreements dating from 2013 through 2016.

110. **“Voting Agent”** means Donlin Recano & Company, Inc., or any successor thereto.

111. **“Voting Deadline”** means the date and time by which all Ballots to accept or reject the Combined Plan and Disclosure Statement must be received in order to be counted.

ARTICLE II.

BACKGROUND

A. General Background

This Section provides an overview of the Debtors’ business and organizational structure and summarizes the events leading up to the filing of the Chapter 11 Cases and certain of the key events in the Chapter 11 Cases.

1. Overview of the Debtors

BLI was founded in 1999 and is headquartered in Uniondale, New York. BLI is a wholly owned subsidiary of BLHI. BLHI has no business operations of its own. BLHI is a

wholly owned subsidiary of Bostwick Laboratories Group Holdings, LP, a Delaware partnership and a non-debtor in these Chapter 11 Cases.

2. Description of the Debtors' Business

BLI is an independent, full-service anatomic pathology laboratory and specialty provider of diagnostic testing services for urologists and gynecologists in the United States. BLI is also a reference laboratory offering a suite of anatomic pathology and molecular testing services to independent physicians nationally. BLI provides laboratory services to the approximately \$1.3 billion urology market, with over 15 years of experience in the field of diagnostic and prognostic testing for the approximately 7,500 non-hospital based urologists practicing in the United States. BLI also has testing capabilities to serve other select subspecialty markets outside of urology, including women's health / OBGYN, gastroenterology, nephrology, and dermatology. BLI's commercial infrastructure and centralized laboratory facility allows service to customers in all fifty (50) states. Its commercial infrastructure includes billing, client services, field technicians, and information technology. BLI is integrated within physician practices through a full suite of practice solution capabilities. BLI also employs directly a team of specialized pathologists

3. Sources of Revenue

BLI is in-network with key large national commercial health insurance plans, as well as Medicare and over twenty-five (25) state Medicaid programs. The vast majority of BLI's business is considered to be "in-network" and driven by those key commercial and government contracts. BLI receives approximately half of its revenue from commercial payors. BLI maintains a diverse range of customers, both in geographic range and type of practice. The majority of BLI's large accounts have longstanding relationships and view BLI as a key relationship to their practice.

4. Leased Properties and Employees

The company's headquarters is located in a leased building in Uniondale, New York and houses of all the laboratory operations. The 77,800 square foot facility contains extensive state of the art testing platforms and has been constructed to streamline operations and increase efficiency. Additionally, BLI leases support facilities in Virginia and Florida.

As of the Petition Date, BLI had approximately 193 employees, with approximately 125 full and part time employees located at the laboratory facility in Uniondale, New York. The employees perform a variety of critical functions relating to the business, including billing and registration, sales and marketing, and laboratory operations.

5. Capital Structure

As of the Petition Date, BLI was a party to the First Lien Revolver. The First Lien Revolver was in an amount of up to \$12,500,000 and matured on September 17, 2017. Interest on the First Lien Revolver was based on LIBOR plus 3.5% (3.733% at December 31, 2015). The balance outstanding on the First Lien Revolver as of the Petition Date was approximately \$1,823,000. The First Lien Revolver was secured by a first lien on substantially all of the assets of BLI and BLI's obligations under the First Lien Revolver were guaranteed by BLHI. The First Lien Revolver was satisfied in full from the debtor-in-possession financing in these Chapter 11 Cases.

As of the Petition Date, BLI was indebted in the approximate amount of \$950,000 in Second Lien Notes. The Second Lien Notes were secured by all of BLI's assets but were subordinated to the First Lien Revolver under a subordination agreement with the Agent. The assumption of BLI's obligations under the Second Lien Notes was included in the total consideration provided by Poplar Healthcare under the Stalking Horse APA.

BLI is indebted in the approximate of \$40,000,000 in aggregate principal amount in Unsecured Notes. Like the Second Lien Notes, the Unsecured Notes are subject to a subordination agreement which subordinates the Unsecured Notes to the First Lien Revolver but not to other Claims against the Debtors.

In August 2014, BLI entered into a settlement agreement with the DOJ, under which BLI agreed to pay the DOJ \$7,000,000. The agreement included payments pursuant to a \$3,200,000 unsecured installment note, payable in seventeen quarterly installments, beginning June 2016 with interest at 2.25%. The note matures in June 2020. As of the Petition Date, the amount owed to the DOJ was \$2,702,020.80 and BLI was not in default of its obligations under the note. The total consideration provided by Poplar Healthcare under the Stalking Horse APA included payment of \$1,100,000 to the DOJ in partial satisfaction of any setoff Claims held by the United States.

6. Events Leading to the Chapter 11 Filing

BLI was founded in 1999. Although BLI initially experienced growth, there were unexpected and severe cuts to the Medicare physician fee schedule in 2013, with reimbursement for certain procedures being reduced as much as 52%. These cuts were a major factor in BLI realizing a revenue reduction of almost 20% from 2012 to 2013.

Facing those reductions in revenue, BLI focused on cost reductions and streamlining operations to achieve cost efficiencies and to reduce overhead. Four testing locations were closed, and laboratory testing was consolidated into the remaining testing facility in Uniondale, New York. BLI liquidated assets to lower overhead and generate cash to fund operations. BLI sold a non-anatomic pathology clinical testing segment of the business in 2014. The Debtors also divested themselves of ownership of the Uniondale facility through a sale-leaseback agreement.

BLI also engaged in negotiations with its supply chain and vendors to further reduce costs. BLI reduced its employee count from approximately 600 at the start of 2013 to fewer than 200 as of the Petition Date. While all of these efforts minimized expenses and produced liquidity, the efforts to streamline operations ultimately left the company with far fewer assets and less revenue.

Although BLI engaged in vigorous efforts to become profitable, the reduced expenses could not keep up with and counteract the continued reduced reimbursement and lowering revenue. As of the Petition Date, BLI's revenues was approximately one-third of what the company generated in 2012. Despite the lowered revenue, BLI has significant "fixed" costs in relation to real estate leases, insurance, system costs and necessary administrative functions. Moreover, the cost to employ BLI's highly specialized experienced pathologists is significant. Based on the hands-on, manual nature of laboratory testing, BLI did not engage in any further reductions to its laboratory staff. BLI believed that any further reduction efforts would have affected negatively its ability to sell itself as a going concern.

7. Pre-Petition Marketing of the Debtors' Assets

As a result of continuing negative cash flow from its business, in August of 2016, the Debtors retained Leerink, an investment banking firm with extensive experience in the health care industry, to assist and advise on the process of identifying a buyer for the Debtors' business. Beginning in late August, 2016 and early September, 2016, Leerink began a marketing process aimed at identifying potential strategic buyers. In the early stages of the sale process, the field was narrowed to a handful of prospects primarily due to the ongoing concerns around the operations and financial performance of the Debtors.

In their continued efforts to seek to maximize value through the sale of the business, the Debtors began to explore interest in a potential sale of their assets under section

363 of the Bankruptcy Code. The Debtors determined that, given their liquidity needs, existing secured debt facilities, and continued operational losses, a successful section 363 sale process would require debtor-in-possession financing, and the only likely providers of such financing would be a potential buyer of the Debtors' business. Only two potential bidders expressed an interest in providing such financing.

The Debtors, through a special transactions committee of the Debtors' board of directors, ultimately determined that Poplar Healthcare was best situated to enter into an asset purchase agreement and to provide debtor-in-possession financing. The Debtors concluded that the Poplar Healthcare's bid was superior because of Poplar Healthcare's willingness to provide the Debtors with the necessary debtor-in-possession financing to fund the debtors' chapter 11 cases, and Poplar Healthcare's ability to move quickly to document a binding asset purchase agreement and debtor-in-possession financing. Beginning on approximately March 1, 2017, the Debtors and their professionals negotiated the Stalking Horse APA and the DIP Credit Agreement. The Stalking Horse APA was executed on March 13, 2017 and amended on March 20, 2017. The DIP Credit Agreement was executed on March 15, 2017.

B. The Chapter 11 Cases

The following is a brief description of certain material events that have occurred during these Chapter 11 Cases.

1. "First Day" and Related Motions

On or shortly after the Petition Date, the Debtors filed a number of motions and applications seeking certain relief, commonly referred to as "first day" motions, that were essential for the Debtors' transition to chapter 11 and an orderly wind-down and liquidation of the Debtors. A summary of the relief obtained pursuant to these motions is set forth below:

- *Debtors' Motion for Entry of Order Directing Procedural Consolidation and Joint Administration of Chapter 11 Cases.* The Debtors sought entry of an Order directing the joint administration of the Chapter 11 Cases and consolidation thereof for procedural purposes only. On March 16, 2017, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket No. 26].
- *Debtors' Application for Entry of an Order Authorizing and Approving the Appointment of Donlin Recano as Claims and Noticing Agent Under 28 U.S.C. § 156, 11 U.S.C. § 105(a), and LBR 2002-1(f).* The Debtors sought authorization to retain and employ Donlin Recano & Company, Inc. as their claims and noticing agent for the Chapter 11 Cases. On March 16, 2017, the Bankruptcy Court entered an Order granting the relief requested in the application [Docket No. 27].²
- *Debtors' Motion for Entry of Interim and Final Orders Authorizing Continued Use of the Debtors' Cash Management System.* The Debtors sought entry of interim and final Orders (i) authorizing the Debtors to (a) continue operating their cash management system, (b) honor certain fees and charges in connection with the ordinary course operation of their cash management system, and (c) maintain existing business forms. The Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis on March 16, 2017 [Docket No. 28] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 10, 2017 [Docket No. 148].
- *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Wages, Compensation, Employee Benefits and other Associated Obligations.* The Debtors sought entry of interim and final Orders (i) authorizing the Debtors, in their sole discretion, to pay amounts relating to certain prepetition employee obligations (as more fully set forth in the motion) and continue existing employee benefit programs (as more fully set forth in the motion), and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing. The Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis on March 16, 2017 [Docket No. 29] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 10, 2017 [Docket No. 149].

² Additionally, on April 7, 2017, the Bankruptcy Court entered an Order [Docket No. 140] authorizing the Debtors to retain Donlin Recano & Company, Inc., pursuant to section 327(a) of the Bankruptcy Code, to serve as administrative agent to the Debtors.

- *Debtors' Motion for Entry of an Order Authorizing the Debtors to Honor Certain Obligations to Customers and Continue Prepetition Customer Practices in the Ordinary Course of Business.* The Debtors sought entry of an Order authorizing the Debtors to honor and perform their prepetition refund obligations to individual customers and third pay payors (such as Medicare and insurance companies) and to continue to issue refunds to such parties post-petition in the ordinary course. The Bankruptcy Court entered an Order granting the relief requested in the motion on March 16, 2017 [Docket No. 30].
- *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Taxes.* The Debtors sought entry of an Order (i) authorizing the Debtors, in their sole discretion, to remit and pay prepetition taxes and fees (as more fully described in the motion) and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay all checks and electronic payment requests in respect of those taxes and fees. On March 16, 2017, the Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis [Docket No. 31] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 10, 2017 [Docket No. 150].
- *Debtors' Motion for Entry of an Order Authorizing the Debtors to Continue Insurance Policies and Pay Related Obligations.* The Debtors sought entry of an Order (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) maintain and continue to honor insurance programs described in the motion and (b) pay the insurance obligations described in the motion, on an uninterrupted basis, consistent with the Debtors' practices in effect prior to the Petition Date, whether such insurance obligations relate to the period prior to or after the Petition Date, and (ii) authorizing banks and other financial institutions to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing. The Bankruptcy Court entered an Order granting the relief requested in the motion on March 17, 2017 [Docket No. 32].
- *Debtors' Motion for Order Authorizing Payment of Prepetition Claims of Certain Critical Vendors.* The Debtors sought entry of an interim and final Orders authorizing, but not directing, then to pay the claims of certain critical vendors in an estimated amount not to exceed \$200,000. On March 16, 2017, the Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis [Docket No. 33] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 10, 2017 [Docket No. 151].

- *Debtors' Motion for Entry of Interim and Final Orders Establishing Adequate Assurance Procedures with respect to the Debtors' Utility Providers.* The Debtors sought entry of interim and final Orders (i) determining adequate assurance of payment for future utility services, (ii) prohibiting certain utility companies from altering, refusing, or discontinuing services, and (iii) establishing procedures for determining adequate assurance of payment. The Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis on March 16, 2017 [Docket No. 34] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 10, 2017 [Docket No. 152].
- *Debtors' Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(d)(1), 364(e) and 507 of the Bankruptcy Code (I) Authorizing Bostwick Laboratories, Inc. to (A) Obtain Post-Petition Secured Financing from Poplar Healthcare, PLLC; (B) Utilize Cash Collateral; and (II) Scheduling a Final Hearing.* The Debtors sought entry of interim and final Orders (i) authoring them to enter into the DIP Credit Agreement; (ii) permitting credit advances to be made under the DIP Credit Agreement to the Debtors up to a maximum of \$3,323,000 on an interim basis and up to \$5,116,000 on a final basis and (iii) granting Poplar Healthcare with super priority claim status, with priority over all administrative expense claims and unsecured claims, a secured claim on all unencumbered property and a senior priming lien on, and security interests in, all collateral of the holders of the Second Lien Notes. On March 20, 2017, the Bankruptcy Court entered an Order granting the relief requested in the motion on an interim basis [Docket No. 60] and thereafter entered an Order granting the relief requested in the motion on a final basis on April 18, 2017 [Docket No. 170].

2. Appointment of the Committee

On March 23, 2017, the United States Trustee appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code. The Committee is comprised of the following entities:

- **Winbrook Management, LLC**, Attn: Ilan Dilmanian, 370 Seventh Avenue, Suite 1600, New York, NY 10001, Phone: 212-643-8080; Fax: 212-643-2626
- **Xifin, Inc.**, Attn: Tammy Lawrence, 12225 El Camino Real, San Diego, CA 92130, Phone: 858-793-5700, Fax: 858-793-5701

- **Leica Biosystems Division of Leica Microsystems, Inc.**, Attn: Ted Biederman, 1700 Leider Lane, Buffalo Grove, IL 60089, Phone: 303-618-9407

3. Employment of Professionals and Advisors

Prior to the Petition Date, James Patrick Carroll was retained by BLI and BLHI to serve as an independent director and the Chief Restructuring Officer for both companies. As part of the Chapter 11 Cases, the Bankruptcy Court entered Orders authorizing the Debtors to retain (i) Pepper Hamilton LLP as bankruptcy counsel to the Debtors [Docket No. 141] and Leerink as investment banker to the Debtors [Docket No. 153]. On July 11, 2017, the Debtors filed a motion to retain KPMG LLP as tax compliance and tax consultants [Docket No. 382], which motion is scheduled to be heard by the Bankruptcy Court on August 1, 2017. Additionally, the Bankruptcy Court entered Orders authorizing the Committee to retain (i) Sheppard Mullin Richter Hampton LLP as lead counsel to the Committee [Docket No. 273; (ii) Pachulski Stang Ziehl & Jones LLP as co-counsel to the Committee [Docket No. 274] and (iii) Protiviti, Inc. as financial advisor to the Committee [Docket No. 281]. The Debtors have also retained ordinary course professionals in the Chapter 11 Cases pursuant to the procedures set forth in the OCP Order.

4. Sale Process

Following an extensive pre-petition sale process as discussed above, on March 15, 2017, the Debtors filed the Sale Motion with the Bankruptcy Court. The Sale Motion sought (i) approval of the bid procedures in connection with the sale and (ii) approval of the sale to Poplar Healthcare as the stalking horse purchaser or the highest or otherwise best bidder at an auction.

On April 3, 2017, the Bankruptcy Court held a hearing on the bid procedures portion of the relief requested in the Sale Motion and, that same day, entered the Bidding Procedures Order approving such relief.

Pursuant to the Bidding Procedures Order, the Debtors were authorized to conduct an auction on April 26, 2017 if they received any qualified bids (other than the stalking horse bid). The Debtors did not receive any qualified bids, the auction was cancelled in accordance with the terms of the Bidding Procedures Order and the Debtors announced Poplar Healthcare as the highest or otherwise best bidder for the Debtors' assets.

The total consideration offered by Poplar Healthcare under the Stalking Horse APA is (i) the purchase price, \$6,505,000.00 (which includes payment of \$1,100,000 to the DOJ on account of its notes) plus (ii) the assumption of \$950,000 in principal amount of the Second Lien Notes plus (iii) cure costs and Assumed Taxes (as such term is defined in the Stalking Horse APA).

The Bankruptcy Court approved the sale of the Debtors' assets to Poplar Healthcare at the sale hearing and entered the Sale Order on April 28, 2017. The sale closed on May 4, 2017 [Docket No. 241]. Pursuant to the terms of the Stalking Horse APA and the Sale Order, the Debtors and Poplar Healthcare are operating under a transitions services agreement through the end of July 2017, pursuant to which, *inter alia*, the Debtors are providing certain services to Poplar Health in exchange for certain payment by Poplar Healthcare to the Debtors.

5. Claims Process and Bar Date

(a) *Section 341(a) Meeting of Creditors*

On February 16, 2017, the United States Trustee held a meeting of creditors in these Chapter 11 Cases pursuant to section 341 of the Bankruptcy Code. The meeting was adjourned to August 1, 2017.

(b) *Schedules and Statements*

On May 19, 2017, each of the Debtors filed their respective Schedules [Docket Nos. 284, 285, 286 and 287]. Among other things, the Schedules set forth the Claims of known

Creditors against the Debtors as of the Petition Date, based upon the Debtors' books and records. The Debtors retain the right to amend the Schedules during the pendency of the Chapter 11 Cases.

(c) *Bar Dates*

Pursuant to the Bar Date Order, the Bankruptcy Court established, among others, the following bar dates for filing proofs of claim:

- (i) General Bar Date: June 27, 2017 at 5:00 p.m. (prevailing Eastern Time) as the deadline for Creditors holding pre-petition Claims to file Proofs of Claim in the Chapter 11 Cases.
- (ii) Government Bar Date: September 11, 2017 at 5:00 p.m. (prevailing Eastern Time) as the deadline for all Governmental Units to file Proofs of Claim in the Chapter 11 Cases.
- (iii) Administrative Expense Bar Date: June 27, 2017 at 5:00 p.m.³ (prevailing Eastern Time) as the deadline for Creditors holding Administrative Expense Claims from the Petition Date through and including May 4, 2017 to file (i) Proofs of Claim in the Chapter 11 Cases if asserting a section 503(b)(9) Claim and (ii) written applications or written motions if asserting an Administrative Expense Claim for any other reason.
- (iv) Amended Schedules Bar Date: With respect to any Claim affected, as described in the Bar Date Order, by the Debtors' amendment, if any, of the Schedules, the Holder of any such affected Claim must file a Proof of Claim on or before the later of (1) the General Bar Date or (2) 5:00 p.m. (prevailing Eastern Time) on the date that is 21 days after the Debtors provides notice to the Holder of the amendment.
- (v) Rejection Claims Bar Date: With respect to Claims arising from the Debtors' rejection of Executory Contracts or Unexpired Leases pursuant to section 365 of the Bankruptcy Code, any such Creditor must file a Proof of Claim based on such rejection by the later of (1) the General Bar Date or (2) 5:00 p.m. (prevailing Eastern Time) on the date that is 35 days following the entry of the Order approving the rejection of an Executory Contract or Unexpired

³ The Administrative Expense Bar Date was extended for the United States through September 11, 2017, by agreement between the Debtor and the United States.

Lease under which the Person or Entity asserting the Claim is a party.

6. Rejection of Certain Executory Contracts and Unexpired Leases

On August 1, 2017, the Bankruptcy Court entered an order authoring the Debtors to reject an Unexpired Lease and Unexpired sub-Lease for real property located in Glen Allen, Virginia *nunc pro tunc* to June 30, 2017 [Docket No. 448]. On July 28, 2017, the Bankruptcy Court entered an order authoring the Debtors to reject an Unexpired Lease for real property located in Uniondale, New York *nunc pro tunc* to July 31, 2017 [Docket No. 431]. Additionally, on July 18, 2017, July 31, 2017 and August 1, 2017, the Bankruptcy Court entered orders authorizing the Debtors to reject certain Executory Contracts and Unexpired Leases [Docket Nos. 405, 441 and 447].

7. Assumption of Certain Executory Contracts and Unexpired Leases

On July 28, 2017, the Bankruptcy Court entered (i) an order authorizing the Debtors to assume and assign certain Executory Contracts and Unexpired Leases to Poplar Healthcare *nunc pro tunc* to July 31, 2017 [Docket Nos. 427] and (ii) an order authoring the Debtors to assume and assign an Unexpired Lease for real property located in Grapevine, Texas to Poplar Healthcare *nunc pro tunc* to July 31, 2017 [Docket No. 430].

ARTICLE III.

TAX CONSEQUENCES

A. Tax Consequences

The confirmation and execution of this Combined Plan and Disclosure Statement may have tax consequences to Holders of Claims and Equity Interests. The Debtors do not offer an opinion as to any federal, state, local or other tax consequences to Holders of Claims and Equity Interests as a result of the confirmation of this Combined Plan and Disclosure Statement.

All Holders of Claims and Equity Interests are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of this Combined Plan and Disclosure Statement. This Combined Plan and Disclosure Statement is not intended, and should not be construed, as legal or tax advice to any Creditor, Equity Interest Holder or other party in interest.

ARTICLE IV.

CERTAIN RISK FACTORS TO BE CONSIDERED

A. Risk Factors to Be Considered

The Plan and its implementation are subject to certain risks, including, but not limited to, the risk factors set forth below. Holders of Claims and Equity Interests should read and consider carefully the risk factors below, as well as the other information set forth in this Combined Plan and Disclosure Statement, the documents attached to this Combined Plan and Disclosure Statement, and the documents referred to or incorporated by reference in this Combined Plan and Disclosure Statement. These factors should not be regarded as constituting the only risks present in connection with this Combined Plan and Disclosure Statement and its implementation.

1. The Combined Plan and Disclosure Statement May Not Be Accepted

There can be no assurance that the requisite acceptances to confirm the Combined Plan and Disclosure Statement will be obtained.

2. The Combined Plan and Disclosure Statement May Not Be Confirmed

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a Chapter 11 plan. While the Debtors believe that this Combined Plan and Disclosure Statement complies with or will comply with all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

3. Risk of Non-Occurrence of the Effective Date

There can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

4. Parties May Object to the Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Equity Interests under the Combined Plan and Disclosure Statement complies with the requirements set forth in the Bankruptcy Code. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion.

B. Alternate Combined Plan and Disclosure Statement

If this Combined Plan and Disclosure Statement is not confirmed, the Debtors could attempt to formulate a different plan. The additional cost, including, among other amounts, additional professional fee, would constitute Administrative Expense Claims (subject to allowance) that may be so significant that one or more parties in interest could request that the Chapter 11 Cases be converted to chapter 7. The Debtors believe that conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code will result in the incurrence of significant additional fees and expenses (which would have priority over Administrative Expense Claims of the Chapter 11 Cases and General Unsecured Claims), to the detriment of Creditors. Accordingly, the Debtors believe that the Combined Plan and Disclosure Statement enable Creditors to realize the best return under the circumstances.

ARTICLE V.

BEST INTEREST AND FEASIBILITY

A. Best Interests Test

Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim or Equity Interest either (a) accept the plan or (b) receive or retain under plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Because of the increased expenses that would be incurred in the event of a conversion of the Chapter 11 Cases to cases under Chapter 7, the value of any Distributions to Holders of Claims or Equity Interests if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under this Combined Plan and Disclosure Statement. This is because conversion of the Chapter 11 Cases to chapter 7 cases would require the appointment of a chapter 7 trustee, and in turn, such chapter 7 trustees' likely retention of new professionals. The "learning curve" that the chapter 7 trustee and new professionals would be faced with comes with additional costs to the Estates and delay compared to the time of Distributions under this Combined Plan and Disclosure Statement.

As a result, the Debtors believe that the Estates would have fewer funds available for distribution in a hypothetical chapter 7 liquidation than they would if this Combined Plan and Disclosure Statement is confirmed, and therefore Holders of Allowed Claims will recover less in the hypothetical chapter 7 cases. Accordingly, Debtors believe that the "best interest" test of Bankruptcy Code section 1129 is satisfied.

B. Liquidation Analysis

The Combined Plan and Disclosure Statement will provide holders of Allowed Claims and Equity Interests not less than what would be available to them in a chapter 7 liquidation. It proposes to pay all administrative and priority creditors in full.

A hypothetical chapter 7 liquidation analysis is attached to this Combined Plan and Disclosure Statement as **Exhibit B**. In a chapter 7 liquidation, the fees and expenses of a chapter 7 trustee and his or her professionals will be substantial. The new chapter 7 trustee and his or her retained professionals would require time and effort to get up to speed and to administer the chapter 7 cases. The Debtors believe that the value of any Distributions if the Debtors' Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Combined Plan and Disclosure Statement. Accordingly, the Debtors believe that the "best interests" test of Bankruptcy Code section 1129 is satisfied.

C. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that Confirmation of the Combined Plan and Disclosure Statement is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Combined Plan and Disclosure Statement, unless such liquidation or reorganization is proposed in the Combined Plan and Disclosure Statement. As set forth herein, the Debtors commenced these Chapter 11 Cases to allow for an efficient and orderly wind down process and the Combined Plan and Disclosure provides for the liquidation of the Debtors' assets for the benefit of Creditors. The Debtors will not be conducting any business operations after the Effective Date. As such, provided that the Combined Plan and Disclosure Statement is confirmed and consummated, the Estates will not be subject to future reorganization or

liquidation. Accordingly, the Debtors believe that the Combined Plan and Disclosure Statement is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

ARTICLE VI.

SUMMARY OF ASSETS AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Summary of Assets

On the Effective Date, the assets of the Post-Effective Date Debtors shall include, without limitation, all Cash on hand, the Causes of Action (including those net recoveries realized from the prosecution and/or settlement of Causes of Action), the Retained Assets, any tax refund, all rights of setoff and recoupment and other defenses that the Post-Effective Date Debtors and the Estates may have with respect to any Claim and all Insurance Policies and the proceeds related to such Insurance Policies.

B. Summary of Treatment of Claims and Equity Interests

The following chart provides a summary of treatment of the classified Claims and Equity Interests. The treatment provided in this chart is for informational purposes only and is qualified in its entirety by Article VIII and Article IX of this Combined Plan and Disclosure Statement.

CLASS	TREATMENT AND VOTING STATUS	RANGE OF ESTIMATED ALLOWED CLAIM AMOUNTS	ESTIMATED RECOVERIES OR AMOUNTS AVAILABLE FOR DISTRIBUTION
Class 1: Priority Non-Tax Claims	Unimpaired Deemed to Accept Not Entitled to Vote	\$25,791 - \$25,791	100%
Class 2: Secured Claims	Unimpaired Deemed to Accept Not Entitled to Vote	\$58,518 - \$164,518	100%

Class 3: Secured Tax Claims	Unimpaired Deemed to Accept Not Entitled to Vote	\$23,375 - \$23,375	100%
Class 4: General Unsecured Claims	Impaired Entitled to Vote	\$43,500,000 - \$54,046,000 ⁴	3.19% - 3.97%
Class 5: Intercompany Claims	Impaired Deemed to Reject Not Entitled to Vote	None	0%
Class 6: Equity Interests	Impaired Deemed to Reject Not Entitled to Vote	No value	0%

ARTICLE VII.

CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedure

1. Confirmation Hearing

A hearing before the Honorable Brendan L. Shannon has been scheduled for **September 15, 2017 at 10:00 a.m. (prevailing Eastern Time)**, at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19081 to consider confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by Filing a notice with the Bankruptcy Court.

⁴ The range of estimated Allowed Claim amounts does not include Claims arising from the Debtors' rejection of Executory Contracts or Unexpired Leases pursuant to section 365 of the Bankruptcy Code as the amount of such Claims is currently unknown and any estimate at this time would be purely speculative.

2. Procedure for Objections

Any objection to confirmation of this Combined Plan and Disclosure Statement must: (a) be in writing, (b) conform to the Bankruptcy Rules and Local Bankruptcy Rules, and (c) be filed with the Bankruptcy Court and served so as to be actually received on or before **September 8, 2017 at 4:00 p.m. (prevailing Eastern Time) (“Confirmation Objection Deadline”)**, by (i) counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, P.O. Box 1709, Wilmington, DE 19899-1709, Attn: David B. Stratton and Evelyn J. Meltzer; (ii) counsel to the Committee, Sheppard Mullin Richter & Hampton LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Craig A. Wolfe and Jason R. Alderson, and (iii) the United States Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, DE 19801, Attn: Jane Leamy. **Unless an objection is timely filed and served by the Confirmation Objection Deadline, the objection may not be considered by the Bankruptcy Court at the Confirmation Hearing.**

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in these Chapter 11 Cases is that the Combined Plan and Disclosure Statement be: (a) accepted by all Impaired Classes of Claims and Equity Interests or, if rejected by an Impaired Class, that the Combined Plan and Disclosure Statement “does not discriminate unfairly” against and is “fair and equitable” with respect to such Class; and (b) feasible. The Bankruptcy Court must also find that:

- (a) The Combined Plan and Disclosure Statement has classified Claims and Equity Interests in a permissible manner;
- (b) The Combined Plan and Disclosure Statement complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and

- (c) The Combined Plan and Disclosure Statement has been proposed in good faith.

The Debtors believe that the Combined Plan and Disclosure Statement complies, or will comply, with all such requirements.

4. Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code requires the Combined Plan and Disclosure Statement to place a Claim or Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Combined Plan and Disclosure Statement create separate Classes to deal respectively with the various Classes of Claims and Equity Interests. The Debtors believe that the Combined Plan and Disclosure Statement's classifications place substantially similar Claims or Equity Interests in the same Class and thus meet the requirements of section 1122 of the Bankruptcy Code.

5. Impaired Claims or Equity Interests

Section 1124 of the Bankruptcy Code provides that a Class of Claims or Equity Interests may be Impaired if the Combined Plan and Disclosure Statement alters the legal, equitable or contractual rights of the Holders of such Claims or Equity Interests. Holders of Claims or Equity Interests that are Impaired are entitled to vote on the Combined Plan and Disclosure Statement. Holders of Claims that are Unimpaired by the Combined Plan and Disclosure Statement are deemed to accept the Combined Plan and Disclosure Statement and do not have the right to vote on the Combined Plan and Disclosure Statement.

Under the Combined Plan and Disclosure Statement, Holders of Priority Non-Tax Claims, Secured Claims and Secured Tax Claims are Unimpaired, are deemed to accept the Combined Plan and Disclosure Statement and are not entitled to vote on the Combined Plan and Disclosure Statement. Under the Combined Plan and Disclosure Statement, Holders of General

Unsecured Claims will receive their Pro Rata share of the Available Cash and therefore are Impaired. Holders of General Unsecured Claims are entitled to vote on the Combined Plan and Disclosure Statement. Under the Combined Plan and Disclosure Statement, Holders of Intercompany Claims and Equity Interests will not receive or retain any property under the Combined Plan and Disclosure Statement, are deemed to reject the Combined Plan and Disclosure Statement and do not have the right to vote. Finally, the Holders of Claims that are not classified under the Combined Plan and Disclosure Statement (Administrative Expense Claims and Priority Tax Claims) are not entitled to vote on the Combined Plan and Disclosure Statement.

6. Eligibility to Vote on the Plan

Unless otherwise ordered by the Bankruptcy Court, only Holders of Claims in Class 4- General Unsecured Claims may vote on the Plan. In order to vote on the Plan, you must hold a Claim in Class 4. For purposes of calculating the number of Allowed Claims in Class 4 that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Allowed Claims in Class 4 held by one Entity or any Affiliate thereof shall be aggregated and treated as one Allowed Claim in Class 4.

7. Solicitation Notice

All Holders of Claims in Class 4 will receive, among other documents the Confirmation Notice, a form of Ballot, and a copy of the Combined Plan and Disclosure Statement.

All other creditors are not entitled to vote on the Combined Plan and Disclosure Statement and will only receive (i) the Confirmation Notice, and (ii) a non-voting notice containing (a) the website address, <https://www.donlinrecano.com/bostwick> where parties in interest may download electronic copies of the Combined Plan and Disclosure Statement and

other related pleadings to the Chapter 11 Cases, (b) the address for the Voting Agent, Donlin, Recano & Company, Inc., Re: Bostwick Laboratories, Inc., Attn: Voting Department, P.O. Box 192016 Blythebourne Station, Brooklyn, NY 11219, pursuant to which parties in interest may request copies of the Combined Plan and Disclosure Statement, Ballot, and related documents and (c) reference to the Bankruptcy Court's website, through which parties in interest can download electronic copies of the Combined Plan and Disclosure Statement, Ballot and other related pleadings.

8. Procedure/Voting Deadline

In order for your Ballot to count, you must (i) complete, date and properly execute the Ballot, and (ii) properly deliver the Ballot to the Voting Agent by First Class Mail to the following address: Donlin, Recano & Company, Inc., Re: Bostwick Laboratories, Inc., Attn: Voting Department, P.O. Box 192016 Blythebourne Station, Brooklyn, NY 11219 or via overnight courier, messenger or hand deliver to Donlin, Recano & Company, Inc., Re: Bostwick Laboratories, Inc., Attn: Voting Department, 6201 15th Ave., Brooklyn, NY 11219. Ballots may also be delivered to the Voting Agent by electronic mail sent to BostwickVote@DonlinRecano.com with "Bostwick Vote" on the subject line.⁵

The Voting Agent must ACTUALLY RECEIVE Ballots on or before the Voting Deadline. Except as otherwise ordered by the Bankruptcy Court or agreed to by the Debtors, you may not change your vote or election once a Ballot is submitted to the Voting Agent.

Any Ballot that is timely received from a party entitled to vote, that contains sufficient information to permit the identification of the party casting the Ballot, and that is cast

⁵ For any Ballot cast via electronic mail, the format of the attachment must be found in the common workplace and industry standard format (i.e., industry-standard PDF file) and the received date and time in the Balloting Agent's inbox will be used as the timestamp for receipt.

as an acceptance or rejection of the Combined Plan and Disclosure Statement will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Combined Plan and Disclosure Statement; provided, however, that the following Ballots will not be counted or considered for any purpose in determining whether the Combined Plan and Disclosure Statement has been accepted or rejected: (a) any Ballot received after the Voting Deadline (unless extended by the Bankruptcy Court or Debtors); (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (c) any Ballot cast by a Person or Entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Combined Plan and Disclosure Statement; (d) any Ballot cast for a Claim that is scheduled as contingent, unliquidated or disputed or as zero or unknown in amount and for which no timely motion was filed pursuant to Bankruptcy Rule 3018(a); (e) any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and rejection of the Combined Plan and Disclosure Statement; (f) any Ballot that casts part of its vote in the same Class to accept the Combined Plan and Disclosure Statement and part to reject the Combined Plan and Disclosure Statement; (g) any form of Ballot other than the official form sent by the Voting Agent; (h) any form of Ballot received that the Voting Agent cannot match to an existing database record of a creditor; (i) any original Ballot that does not contain an original signature; provided, however, that any Ballot submitted via electronic mail does not require an original signature; (j) any Ballot that is submitted by facsimile; or (k) any Ballot sent only to the Debtors or the Debtors' professionals and not the Voting Agent.

9. Acceptance of the Plan

As a Creditor, your acceptance of the Combined Plan and Disclosure Statement is important. In order for the Combined Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar

amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtors urge that you vote to accept the Combined Plan and Disclosure Statement.

10. Elimination of Vacant Classes

Any Class of Claims or Equity Interests that does not contain, as of the date of commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest or a Claim temporarily Allowed under Bankruptcy Rule 3018 (*i.e.*, no Ballots are cast in a Class entitled to vote on the Combined Plan and Disclosure Statement), shall be deemed deleted from the Combined Plan and Disclosure Statement for all purposes, including for purposes of: (i) voting on the acceptance or rejection of the Combined Plan and Disclosure Statement; and (ii) determining acceptance or rejection of the Combined Plan and Disclosure Statement by such Class under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE VIII.

TREATMENT OF UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Equity Interests set forth in Article IX.

A. Supplemental General Administrative Claims Bar Date

Requests for payment of General Administrative Expense Claims for the Supplemental General Administrative Claim Period must be filed by no later than the Supplemental General Administrative Claims Bar Date. Holders of General Administrative Expense Claims that arose, accrued or otherwise became due during the Supplemental Administrative Claims Period that do not file requests for the allowance and payment thereof on

or before the Supplemental Administrative Claims Bar Date shall forever be barred from asserting such General Administrative Expense Claims against the Debtors or their Estates. Unless the Debtor or the Plan Administrator, as applicable, objects to an General Administrative Expense Claim by the Claims Objection Deadline, such General Administrative Expense Claim shall be deemed Allowed in the amount requested. In the event that the Debtor or the Plan Administrator, objects to a General Administrative Expense Claim, and the objection is not otherwise resolved, the Bankruptcy Court shall determine the Allowed amount of such General Administrative Expense Claim.

B. Administrative Expense Claims

1. General Administrative Expense Claims

On or as soon as reasonably practicable after the later of: (i) the Effective Date; or (ii) the date such General Administrative Expense Claim becomes Allowed, the Holder of an Allowed General Administrative Expense Claim shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court) or such other treatment as may be agreed upon by such Holder of an Allowed General Administrative Expense Claim; provided, however, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors shall be paid in full and performed by the Debtors in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

2. Professional Fee Claims

(a) *Final Fee Applications*

Final Fee Applications seeking payment of Professional Fee Claims for fees and expenses incurred through the Effective Date shall be filed no later than thirty (30) days after the

Effective Date unless otherwise extended by the Bankruptcy Court; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the OCP Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Court review or approval, pursuant to the terms of the OCP Order. After notice and a hearing, in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

(b) *Post-Effective Date Fees and Expenses*

After the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Plan Administrator/Post-Effective Date Debtors may employ and pay any Retained Professional in the ordinary course of business without any further notice, to or action, order, or approval of, the Bankruptcy Court.

3. Statutory Fees

All Statutory Fees that become due and payable prior to the Effective Date shall be paid by the Debtors within thirty (30) days after the Effective Date. After the Effective Date, the Plan Administrator/Post-Effective Date Debtors shall pay any and all such fees when due and payable, and shall File quarterly reports in the form prescribed by the United States Trustee. Notwithstanding the substantive consolidation of the Debtors called for in this Combined Plan and Disclosure Statement, each of the Post-Effective Date Debtors shall remain obligated to pay quarterly fees to the United States Trustee until the earliest of that particular Post-Effective Date Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

C. Priority Tax Claims

Except to the extent that a holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date or agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, in full and complete settlement, satisfaction and discharge of its Allowed Priority Tax Claim, at the option of the Debtors, (a) Cash in an amount equal to such Allowed Priority Tax Claim on the later of the Effective Date and the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is practicable, (b) in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, equal annual Cash payments commencing on the first anniversary of the Effective Date in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest on any outstanding balance from the Effective Date at the applicable rate under non-bankruptcy law, over a period not exceeding five years after the Petition Date or (c) upon such other terms determined by the Bankruptcy Court to provide the Holder of such Allowed Priority Tax Claim with deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim; provided, however, that the Debtors shall have the right to pay any Allowed Priority Tax Claim, or any remaining balance, in full, at any time on or after the Effective Date, without premium or penalty. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business, without interest, as such obligations become due.

ARTICLE IX.**CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS****A. Classification of Claims**

CLASS	TYPE	STATUS UNDER PLAN	VOTING STATUS
1	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
2	Secured Claims	Unimpaired	Deemed to Accept
3	Secured Tax Claims	Unimpaired	Deemed to Accept

4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Deemed to Reject
6	Equity Interests	Impaired	Deemed to Reject

This Combined Plan and Disclosure Statement is premised upon the substantive consolidation of the Debtors. Accordingly, for purposes of the Combined Plan and Disclosure Statement only, the assets and liabilities of the Debtors are deemed the assets and liabilities of a single administratively consolidated entity and no value is attributed to the membership interests held by BHLI in BLI. Claims filed against both Debtors seeking recovery of the same debt shall be treated as one non-aggregated Claim against the consolidated Estates to the extent that such Claim is an Allowed Claim.

The categories of Claims and Equity Interests listed below are classified for all purposes, including voting, confirmation and Distribution pursuant to this Combined Plan and Disclosure Statement, as follows:

B. Treatment of Claims and Equity Interests

1. Class 1: Priority Non-Tax Claims

Class 1 consists of the Priority Non-Tax Claims. Except to the extent that a Holder of an Allowed Priority Non-Tax Claim against any of the Debtors agrees to less favorable treatment of such Claim, each such Holder shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Claim, payable on the later of the Effective Date and the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is practicable.

Class 1 is Unimpaired. The Holders of Allowed Priority Non-Tax Claims are Unimpaired and deemed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code.

2. Class 2: Secured Claims

Class 2 consists of the Secured Claims of landlords, lessors, utilities or other third parties to the extent that any such Holder has a non-avoidable Lien on property in which the Estates have an interest and only to the extent of the value of such Holder's interest in the respective Estate's interest in such property.

Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment of such Claim, each Holder of an Allowed Secured Claim shall receive, in full and complete settlement, satisfaction and discharge of its Allowed Secured Claim, at the option of the Debtors, (i) Cash in an amount equal to such Allowed Secured Claim on the later of the Effective Date and the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable, or (ii) the collateral securing its Allowed Secured Claim and any interest on such Allowed Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable.

Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment of such Claim, that Holder of an Allowed Secured Claim shall retain the Liens (or replacement Liens), if any, securing its Allowed Secured Claim as of the Effective Date until any Distribution(s) shall have been made to such Holder hereunder, at which time such Liens shall be deemed null and void and shall be unenforceable for all purposes. As to any Holder of an Allowed Secured Claim that has been paid prior to the Effective Date, such Liens shall be deemed null and void and shall be unenforceable for all purposes.

Class 2 is Unimpaired. The Holders of Allowed Secured Claims are Unimpaired and deemed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code.

3. Class 3- Secured Tax Claims

Class 3 consists of Secured Tax Claims. Except to the extent that a Holder of an Allowed Secured Tax Claim agrees to a less favorable treatment of such Claim, each Holder of an Allowed Secured Tax Claim shall receive, in full and complete settlement, satisfaction and discharge of its Allowed Secured Tax Claim, at the option of the Debtors, (i) Cash in an amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Secured Tax Claim becomes an Allowed Secured Tax Claim, or as soon thereafter as is practicable, (ii) commencing on the first anniversary of the Effective Date and continuing on each anniversary thereafter over a period not exceeding five years after the Petition Date, equal annual Cash payments in an aggregate amount equal to such Allowed Secured Tax Claim, together with interest at the applicable rate under non-bankruptcy law, subject to the option of the Debtors to prepay the entire amount of the Allowed Secured Tax Claim or any remaining balance at any time, or (iii) upon such other terms determined by the Bankruptcy Court to provide the holder of such Allowed Secured Tax Claim with deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Secured Tax Claim.

Except to the extent that a Holder of an Allowed Secured Tax Claim agrees to a less favorable treatment of such Claim, each Holder of an Allowed Secured Tax Claim shall retain the Liens (or replacement Liens), if any, securing its Allowed Secured Tax Claim as of the Effective Date until full and final payment of such Allowed Secured Tax Claim is made as provided herein, and upon such full and final payment, such Liens shall be deemed null and void and shall be unenforceable for all purposes. As to any Holder of an Allowed Secured Tax Claim that has been paid prior to the Effective Date, such Liens shall be deemed null and void and shall be unenforceable for all purposes.

Class 3 is Unimpaired. The Holders of Allowed Secured Tax Claims are unimpaired and deemed to have accepted the Combined Plan and Disclosure Statement pursuant to section 1126(f) of the Bankruptcy Code.

4. Class 4: General Unsecured Claims

Class 4 consists of all General Unsecured Claims. Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of such Claim, each such Holder shall receive, in full and final satisfaction of such Claim, after full satisfaction of (or the establishment of an appropriate reserve therefor) Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Secured Claims and Allowed Secured Tax Claims, its Pro Rata Distribution of Available Cash provided, however, that the aggregate Distributions received pursuant to the Combined Plan and Disclosure Statement shall not exceed the amount of Allowed General Unsecured Claims plus Postpetition Interest thereon. Class 4 Distributions are subject to all statutory, equitable and contractual subordination claims, rights, defenses and grounds available to the Debtors and their Estates.

Class 4 is Impaired. The Holders of Allowed General Unsecured Claims are Impaired and are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

5. Class 5: Intercompany Claims

Class 5 consists of the Intercompany Claims. On the Effective Date, all Intercompany Claims shall be extinguished and deemed cancelled. The Holders of Intercompany Claims will receive no Distribution under the Combined Plan and Disclosure Statement.

Class 5 Claims are Impaired. Holders of Class 5 Claims are deemed to have rejected the Combined Plan and Disclosure Statement pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

6. Class 6: Equity Interests

Class 6 consists of Equity Interests. On the Effective Date, Equity Interests shall be deemed to be cancelled. The Holders of Equity Interests will receive no Distribution or other recovery on account of such Equity Interests.

Class 6 is Impaired. Holders of Equity Interests in Class 6 are deemed to have rejected the Combined Plan and Disclosure Statement pursuant to section 1126(g) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

C. Modification of Treatment of Claims and Equity Interests

At any time after the Confirmation Date, the Debtors, the Post-Effective Date Debtors and the Plan Administrator each has the right to modify the treatment of any Allowed Claim or Equity Interest in any manner adverse only to the Holder of such Claim or Equity Interest with the consent of the Holder of such Claim or Equity Interest.

D. Cramdown and No Unfair Discrimination

With respect to the Impaired Classes that are deemed to have rejected the Combined Plan and Disclosure Statement, the Debtors will request that the Bankruptcy Court confirm the Combined Plan and Disclosure Statement in accordance with section 1129(b) of the Bankruptcy Code with respect to each such non-accepting Class, in which case the Combined Plan and Disclosure Statement shall constitute a motion for such relief.

Confirming the Combined Plan and Disclosure Statement under such circumstances is known as a “cramdown.” A “cramdown” is appropriate where the Bankruptcy Court finds that such plan does not “unfairly discriminate” against the objecting class and is “fair and equitable” with respect to such objecting class. A plan “unfairly discriminates” against a class if another class of equal priority will receive greater value under the plan than the non-accepting class without reasonable justification. A plan is “fair and equitable” if no claim or interest junior to the objecting class receives or retains any property under the plan.

ARTICLE X.

POST-CONFIRMATION PLAN ADMINISTRATOR

A. Appointment of the Plan Administrator

On the Effective Date, the Plan Administrator shall be appointed and thereafter shall serve in accordance with the terms of this Combined Plan and Disclosure Statement. The Plan Administrator shall not be required to give any bond or surety or other security for the performance of his duties unless otherwise ordered by the Bankruptcy Court. Effective as of the Effective Date and until such time as the Post-Effective Date Debtors are dissolved, the Plan Administrator shall be the sole officer and director of each Post-Effective Date Debtor. The Plan Administrator shall act for the Post-Effective Date Debtors in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof (and all bylaws, articles of incorporation and related corporate documents are deemed amended by this Combined Plan and Disclosure Statement to permit and authorize the same). Those officers and directors who served in such capacity immediately prior to the Effective Date shall be replaced by the Plan Administrator on the Effective Date.

B. Oversight Committee

The Plan Administrator shall report to a committee of individuals (the “Oversight Committee”) solely with respect to issues related to Insider Litigation Claims. The Oversight Committee shall consist of two members and shall be formed on or before the Effective Date. A member of the Oversight Committee may either be a member of the Committee or a Holder of a General Unsecured Claim who is designated by the Committee to serve on the Oversight Committee. In the event that no one is willing to serve on the Oversight Committee after its formation or there shall have been no Oversight Committee for a period of thirty (30) consecutive days, then the Plan Administrator may, during such a vacancy, and thereafter, ignore any reference in the Combined Plan and Disclosure Statement or the Confirmation Order to the Oversight Committee and all such references in the Combined Plan and Disclosure Statement or the Confirmation Order shall be null and void. Each member of the Advisory Board shall be paid a reasonable stipend for attendance, whether in person or telephonically, at an Oversight Committee meeting. The sole purpose of an Oversight Committee meeting shall be to vote on the disposition of Insider Litigation Claims.

C. Rights and Powers of the Plan Administrator

In addition to any powers, authority and limitations specifically set forth in other provisions of the Combined Plan and Disclosure Statement, the duties and powers of the Plan Administrator shall include, but not be limited to, the following:

- (i) To exercise all power and authority that may be necessary to implement the Combined Plan and Disclosure Statement, commence and prosecute all proceedings that may be commenced and take all actions that may be taken by any officer, director or shareholder of the Post-Effective Date Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Combined Plan and Disclosure Statement;

- (ii) To establish and maintain all bank accounts, make distributions and take other actions consistent with the Combined Plan and Disclosure Statement, including the maintenance of appropriate reserves, in the name of the Post-Effective Date Debtors;
- (iii) To take all steps reasonably necessary and practicable to terminate the corporate existence of the Post-Effective Date Debtors;
- (iv) To file a motion for a final decree to close the Chapter 11 Cases;
- (v) To make decisions regarding the retention or engagement of professionals or other Persons by the Post-Effective Date Debtors, and to pay, without court approval, all fees and expenses of the Post-Effective Date Debtors and their Estates accruing from and after the Effective Date, which the Plan Administrator in his sole discretion determines to be reasonable;
- (vi) Subject to the provisions regarding the disposition of Insider Litigation Claims, to prosecute, defend and/or settle Causes of Action and Claims;
- (vii) To object to Claims, as appropriate;
- (viii) To procure insurance, to the extent necessary;
- (ix) To effect all actions and execute all agreements, instruments and other documents necessary to perform his duties under the Combined Plan and Disclosure Statement;
- (x) To take all other actions not inconsistent with the provisions of the Combined Plan and Disclosure Statement which the Plan Administrator deems reasonably necessary or desirable in connection with the administration and consummation of the Combined Plan and Disclosure Statement; and
- (xi) To exercise such other powers as may be vested in the Plan Administrator by Order of the Bankruptcy Court.

D. Disposition of Insider Litigation Claims

The Plan Administrator shall exercise his sound business judgment in his capacity as a fiduciary to litigate, settle or abandon Claims and Causes of Action, other than Insider Litigation Claims, without the need for Oversight Committee approval or Bankruptcy Court approval. The Plan Administrator shall present to the Oversight Committee the merits of his

recommended disposition of any Insider Litigation Claim (i.e., litigate, settle or abandon). The presentation shall be made on appropriate notice to the Oversight Committee and shall be described in writing and orally by conference call if desired by the members of the Oversight Committee. The following procedures shall apply in determining whether the Oversight Committee has vetoed the Plan Administrator's recommendation:

- (i) if both Oversight Committee members vote to reject the recommendation, the recommendation is deemed vetoed and the Plan Administrator shall obtain Bankruptcy Court approval of the disposition upon a motion on notice to the Oversight Committee;
- (ii) if only one vote is cast and it is to reject, the recommendation is deemed vetoed and the Plan Administrator shall obtain Bankruptcy Court approval of the disposition upon a motion on notice to the Oversight Committee;
- (iii) if two votes are cast and one is to reject and the other is to accept, there is no veto and the recommendation is approved and no further action is required; and
- (iv) if no votes are cast or if only one vote is cast to accept the recommendation, there is no veto and the recommendation is approved and no further action is required.

In the event of a veto, the Oversight Committee shall be entitled to engage counsel to contest any motion of the Plan Administrator to approve the vetoed recommended action. There shall be \$50,000 held by the Estates in reserve to pay the fees and expenses of such counsel, and the Estates' obligation to pay such fees and expenses shall be capped at \$50,000.

E. Post Confirmation Date Expenses of the Plan Administrator

The Plan Administrator shall receive reasonable compensation for services rendered to the Estates and the Post-Effective Date Debtors pursuant to the Combined Plan and Disclosure Statement without further Order. In addition, the amount of reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, reasonable attorney and professional fees and expenses) may be paid without further Order of the Bankruptcy Court.

F. Resignation, Death or Removal of Plan Administrator

The Plan Administrator may be removed at any time for cause shown (including fraud or gross negligence) upon application to, and subject to the approval of, the Bankruptcy Court on at least twenty-one (21) days' prior written notice to the United States Trustee and the Plan Administrator and his counsel. In the event of the resignation or removal, death or incapacity of the Plan Administrator, counsel to the Plan Administrator shall, subject to approval of the United States Trustee or the Bankruptcy Court, designate another Entity to serve as Plan Administrator and thereupon the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor.

G. Investments

All Cash held by the Plan Administrator in any accounts or otherwise shall be invested in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by Order of the Bankruptcy Court.

H. No Agency Relationship, Limitation of Liability of Plan Administrator, Indemnification and Insurance

The Plan Administrator and its, his or her agents shall not be deemed to be the agent for any of the creditors in connection with the Cash held or Distributed pursuant to the

Combined Plan and Disclosure Statement. The Plan Administrator and its, his or her agents shall not be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless it constitutes actual fraud, gross negligence or willful misconduct. The Plan Administrator shall be indemnified and held harmless, including the costs of defending such claims, by the Post-Effective Date Debtors and their Estates against any and all claims arising out of the performance of its, his or her duties under the Plan, except to the extent its, his or her actions constitute actual fraud, gross negligence or willful misconduct. Nothing herein shall preclude the Plan Administrator from asserting as a defense to any Claim of actual fraud, gross negligence or willful misconduct that he reasonably relied upon the advice of counsel with respect to his duties and responsibilities under the Combined Plan and Disclosure Statement or otherwise. The Plan Administrator may obtain, at the expense of the Debtors and their Estates, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligation of the Plan Administrator. The Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon, any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which it, he or she believes to be genuine and to have been signed or presented by the proper party. The Plan Administrator may rely upon written information previously generated by the Debtors.

I. Winding Up Affairs

Following the Effective Date, the Post-Effective Date Debtors shall not engage in any business activities or take any actions, except those necessary to consummate the Combined Plan and Disclosure Statement and wind up the affairs of the Post-Effective Date Debtors. On and after the Effective Date, the Plan Administrator may, in the name of the Post-Effective Date Debtors, take such actions, without supervision or approval by the Bankruptcy Court, and free of any restrictions or conditions set forth in each of the Debtors respective articles of incorporation

and bylaws or the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Combined Plan and Disclosure Statement or the Confirmation Order.

J. Post-Confirmation Reports

After the Effective Date, the Plan Administrator shall file all required post-confirmation reports on a quarterly basis until the closing of the Post-Effective Date Debtors' Chapter 11 Cases or as otherwise ordered by the Bankruptcy Court or required by the United States Trustee.

K. Termination of the Plan Administrator

After the Plan Administrator has completed the tasks necessary to liquidate, wind down, dissolve or terminate the Post-Effective Date Debtors and to otherwise comply with his obligations, the Plan Administrator shall have completed his duties and shall be released and discharged.

ARTICLE XI.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Method of Payment

Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

B. Distributions on Allowed Claims

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or become Allowed Claims thereafter shall be made by the Disbursing Agent pursuant to the terms and conditions of the Combined Plan and Disclosure Statement. Notwithstanding any other provision of the Combined Plan and Disclosure Statement to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that:

(i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as contingent, unliquidated, Disputed or in a zero amount, and for which a Proof of Claim has not been timely Filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently Filed Proof of Claim.

C. Disbursing Agent

The Disbursing Agent shall make all Distributions required under the Combined Plan and Disclosure Statement, subject to the terms and provisions of the Combined Plan and Disclosure Statement. If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent shall receive, without further Bankruptcy Court approval, reasonable compensation from the Plan Administrator for distribution services rendered pursuant to the Combined Plan and Disclosure Statement and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent shall be authorized and directed to rely upon the Debtor's books and records and the Plan Administrator's representatives and professionals in determining Allowed Claims entitled to Distributions under the Combined Plan and Disclosure Statement in accordance with the terms and conditions of the Combined Plan and Disclosure Statement.

D. Objections to and Resolution of Claims

Except as to applications for allowance of compensation and reimbursement of expenses under sections 330, 331 and 503 of the Bankruptcy Code, the Plan Administrator, on and after the Effective Date, shall have the exclusive right to make and file objections to Claims. The Plan Administrator shall have the exclusive right to file objections and/or motions to estimate any and all Claims after the Effective Date. The Plan Administrator shall have the authority to compromise, settle, otherwise resolve or withdraw any objections, without approval

of the Bankruptcy Court. The Plan Administrator shall further have the authority to resolve and settle any and all Claims without approval of the Bankruptcy Court.

E. Claims Objection Deadline

The Plan Administrator shall file and serve any objection to any Claims, including Administrative Expense Claims, no later than the Claims Objection Deadline; provided, however, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion (on notice) by the Plan Administrator.

F. No Distribution Pending Allowance

Notwithstanding any other provision of the Combined Plan and Disclosure Statement, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Combined Plan and Disclosure Statement and such Disputed Claim has become an Allowed Claim.

G. Estimation

The Plan Administrator may, at any time, request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Plan Administrator has previously objected to such Claim. In the event the Bankruptcy Court estimates any contingent or Disputed Claim, the estimated amount may constitute a maximum limitation on such Claim, as determined by the Bankruptcy Court. Notwithstanding this, the Plan Administrator may elect to pursue any supplemental proceedings to object to the allowance and payment of such Claim. All of the aforementioned Claims objection and estimation procedures are cumulative and not exclusive of one another.

H. Claims Reserve

On any date that Distributions are to be made under the terms of the Combined Plan and Disclosure Statement, the Plan Administrator shall reserve Cash or property equal to one-hundred percent (100%) of the Cash or property that would be Distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, unless otherwise Ordered by the Bankruptcy Court following notice to the affected Claim Holder. Such Cash or property, as the case may be, shall be held for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

I. Distribution After Allowance

Except as provided herein, within the later of (i) seven (7) Business Days after such Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Plan Administrator shall distribute all Cash or other property to which a Holder of an Allowed Claim is then entitled.

J. Late Claims and Amendments to Claims After the Confirmation Date

Except as provided herein or otherwise agreed, any and all Holders of Proofs of Claim Filed after the applicable Bar Date shall not be treated as Creditors for purposes of Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date Order unless on or before the Confirmation Date such late Claim has been deemed timely Filed by a Final Order. After the Confirmation Date, a Proof of Claim may not be Filed or amended without the authorization of the Bankruptcy Court.

K. Distribution Record Date

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the

Distribution Record Date will be treated as the Holders of those Claims for all purposes. The Plan Administrator shall have no obligation to recognize any transfer of any Claim occurring after the Distribution Record Date. In making any Distribution with respect to any Claim, the Plan Administrator shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the Proof of Claim Filed with respect thereto or on the Schedules as the Holder thereof as of the close of business on the Distribution Record Date and upon such other evidence or record of transfer or assignment that are actually known to the Plan Administrator as of the Distribution Record Date and that are Filed with the Bankruptcy Court.

L. Delivery of Distributions

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective Proofs of Claim or interest Filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator after the date of any related Proof of Claim or interest; or (3) at the address reflected in the Schedules if no Proof of Claim or interest is filed and the Plan Administrator has not received a written notice of a change of address.

M. Undeliverable and Unclaimed Distributions

If any Allowed Claim Holder's Distribution is returned as undeliverable, the Plan Administrator will take reasonable steps to attempt to deliver the Distribution to the Holder of the Allowed Claim. Any Holder of an Allowed Claim that does not advise the Plan Administrator that it has not received its, his or her distribution within ninety (90) days after the date of attempted distribution will forfeit distribution on such Claim against the Debtors or their property. Distributions must be negotiated within ninety (90) days of the date of Distribution. Any Distributions which are undeliverable and unclaimed or have not been cashed within the time periods set forth above shall become available for Distribution to the Holders of Allowed

Claims in accordance with the Combined Plan and Disclosure Statement and the Holder of an unclaimed or undeliverable Distribution shall not be entitled to any further distribution under the Combined Plan and Disclosure Statement.

N. Escheatment

Notwithstanding any state escheatment law, any state that was entitled to file a Claim in its own right in connection with claims for property that had been deemed abandoned and had escheated to the state prepetition, but failed to comply with the Bar Date and file a Proof of Claim, will be forever barred from assertion of such Claim against the Debtors and their Estates unless otherwise ordered by the Bankruptcy Court.

O. De Minimis Distributions

Distributions of fractions of dollars will not be made, but will be rounded to the nearest dollar (up or down), with half dollars being rounded down. The Plan Administrator shall not be required to make any distribution to a Holder of an Allowed Claim of less than fifty dollars (\$50.00) on account of such Allowed Claim. If a Holder of an Allowed Claim would be entitled to receive less than \$50 as of the time of a particular distribution, but would be entitled to receive more than \$50 in combination with later distributions, Plan Administrator shall combine such distribution with later distributions so that the Holder may eventually be entitled to a distribution of at least \$50 in value.

P. Remaining Available Cash

If in connection with closing the Chapter 11 Cases, the Available Cash remaining is less than \$25,000, the Plan Administrator in his, her or its sole discretion, may donate such amount to a charity.

Q. Setoff and Recoupment

The Plan Administrator shall retain the right to reduce any Claim by way of setoff and recoupment in accordance with the Debtors' Books and Records.

R. Allocation of Distributions Between Principal and Interest

To the extent that any such Allowed Claim entitled to a Distribution under the Combined Plan and Disclosure Statement is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

S. Interest on Claims

Unless otherwise specifically provided for in the Combined Plan and Disclosure Statement or the Confirmation Order, or required by applicable bankruptcy law, Postpetition Interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

T. Withholding and Reporting Requirements

In connection with the consummation of the Combined Plan and Disclosure Statement, the Plan Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a Distribution under the Combined Plan and Disclosure Statement shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such Distribution. The Plan

Administrator has the right, but not the obligation, not to make a Distribution until such Holder has made satisfactory arrangements for payment of any such tax obligations.

The Plan Administrator may require, as a condition to receipt of a Distribution, that the Holder of an Allowed Claim complete and return a Form W-8 or W-9, as applicable to each such Holder. If the Plan Administrator makes such a request and the Holder fails to comply before the date that is 180 days after the request is made, the amount of such Distribution shall irrevocably revert to the Post-Effective Date Debtors and the right to a distribution on account of such Claim shall be forfeited.

ARTICLE XII.

IMPLEMENTATION AND EFFECT OF CONFIRMATION OF COMBINED PLAN AND DISCLOSURE STATEMENT

A. Means for Implementation of the Combined Plan and Disclosure Statement

In addition to the provisions set forth elsewhere in the Combined Plan and Disclosure Statement, the following shall constitute the means for implementation of the Combined Plan and Disclosure Statement:

1. Limited Substantive Consolidation

The Combined Plan and Disclosure Statement provides for substantive consolidation of the Debtors' Estates, but solely for the purposes of this Combined Plan and Disclosure Statement, including making any Distributions to Holders of Allowed Claims. The Debtors propose limited substantive consolidation because BLHI and BLI (which is wholly-owned and controlled by BLHI): (i) operated as a single business organization, having the same legal headquarters and sharing the same office space; (ii) filed consolidated tax returns (iii) had the same officers and directors and (iv) other than its ownership interest in BLI, BLHI had no assets and conducted no business. In fact, BLHI was formed for the sole purpose of holding the

equity in BLI and never had any business operations. For the foregoing reasons, the Debtors believe limited substantive consolidation is in the best interest of all creditors.

On the Effective Date, (i) all assets and liabilities of the Debtors will, solely for Distribution purposes, be treated as if they were merged; (ii) all intercompany claims will be eliminated; (iii) each Claim Filed or to be Filed against the Debtors will be deemed a single non-aggregated Claim against, and a single non-aggregated obligation of, the Debtors; (iv) all guarantees of either Debtor of the payment, performance, or collection of obligations of the other Debtor shall be eliminated and canceled; and (v) all transfers, disbursements and Distributions on account of Claims made by or on behalf of any of the Debtors' Estates hereunder will be deemed to be made by or on behalf of all of the Debtors' Estates. Holders of Allowed Claims entitled to Distributions under this Combined Plan and Disclosure Statement shall be entitled to their Pro Rata share of Available Cash on account of such Claim without regard to which Debtor was originally liable for such Claim. Except as set forth herein, such limited substantive consolidation shall not (other than for purposes related to this Combined Plan and Disclosure Statement) affect the legal and corporate structures of the Debtors.

2. Continuing Existence

From and after the Effective Date, the Post-Effective Date Debtors shall continue in existence for the purpose of (i) winding up their affairs, (ii) liquidating, by conversion to Cash or other methods, any remaining assets of their bankruptcy estates, as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights and privileges of the Post-Effective Date Debtors and their bankruptcy Estates, including, without limitation, Causes of Action, (iv) resolving Disputed Claims, (v) administering the Combined Plan and Disclosure Statement and taking such actions as are necessary to effectuate the Combined Plan and Disclosure Statement, and (vi) filing appropriate tax returns.

Upon the distribution of all remaining assets of the Post-Effective Date Debtors pursuant to the Combined Plan and Disclosure Statement and the filing by or on behalf of the Post-Effective Date Debtors of a certification to that effect with the Bankruptcy Court, the Post-Effective Date Debtors shall be dissolved in accordance with applicable law and the Post-Effective Date Debtors shall file with the appropriate offices of the State of Delaware certificates of dissolution, to the extent necessary.

3. Funding of the Plan

The Plan shall be funded by (i) Available Cash on the Effective Date and (ii) funds available after the Effective Date from, among other things, the liquidation of the Post-Effective Date Debtors' remaining assets and the prosecution and resolution of Causes of Action.

4. Preservation of Causes of Action

To the extent not otherwise waived in writing, released, settled, assigned or sold pursuant to a prior Order, the Plan Administrator specifically retains and reserves the right to assert, after the Effective Date, any and all of the Claims, Causes of Action (including but not limited to those Causes of Action listed on the Causes of Action List) and related rights, whether or not asserted as of the Effective Date, and all proceeds of the foregoing. The Plan Administrator may pursue, abandon, settle or release any or all such Causes of Action, as he deems appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court.

5. Corporate Action; Effectuating Documents; Further Transactions

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the Debtors shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the Debtors. The Debtors, the Post-Effective

Date Debtors or the Plan Administrator, as applicable, are authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

ARTICLE XIII.

EXCULPATION, RELEASES AND INJUNCTIONS

A. Exculpation

Except for any Claims and Causes of Action for actual fraud, gross negligence or willful misconduct as determined by Final Order of a court of competent jurisdiction, the Exculpated Parties shall not have or incur any liability to any Person or Entity, including any Holder of a Claim or Equity Interest and such Holder of a Claim or Equity Interest shall have no right of action against the Exculpated Parties, for any act or omission taken or not taken in connection with, relating to, or arising out of (i) the Filing of the Chapter 11 Cases; (ii) the Chapter 11 Cases; (iii) the prosecution or settlement of Claims and Causes; (iv) the performance, assumption, assignment, termination, or rejection of Executory Contracts and Unexpired Leases; (v) the sale of the Debtors' assets pursuant to section 363 of the Bankruptcy Code (v) the negotiation and Filing of this Combined Plan and Disclosure Statement; (vi) the pursuit of confirmation of this Combined Plan and Disclosure Statement; (vii) the consummation of this Combined Plan and Disclosure Statement (viii) the administration of this Combined Plan and Disclosure Statement or (ix) the Distribution of property under this Combined Plan and Disclosure Statement. Nothing herein shall preclude the Exculpated Parties from asserting as a defense to any Claim of actual fraud, gross negligence or willful misconduct that he or she

reasonably relied upon the advice of counsel with respect to his or her duties and responsibilities under the Combined Plan and Disclosure Statement or otherwise.

B. Release by the Debtors

Except for any Claims and Causes of Action for actual fraud, gross negligence or willful misconduct as determined by Final Order of a court of competent jurisdiction, on the Effective Date of the Combined Plan and Disclosure Statement, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties shall be expressly, and are hereby unconditionally, generally and individually and collectively released, acquitted and discharged by the Debtors and their Estates and any Person or Entity seeking to exercise the rights of the Debtors' Estates, including, without limitation, any successor to the Debtors, any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code or the Plan Administrator, whether pursuing an action derivatively or otherwise, from any and all Causes of Actions, Claims, obligations, rights, suits, damages, causes, judgements, debts, remedies and liabilities whatsoever, whether asserted or that could be asserted, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing as of the Effective Date or hereinafter arising in law, equity, contract, tort or otherwise, by statute or otherwise, based on or relating to, or in any manner arising from, in whole or in part, (i) the Debtors, (ii) the Chapter 11 Cases, (iii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Combined Plan and Disclosure Statement or the property to be Distributed under this Combined Plan and Disclosure Statement, (iv) the business or contractual arrangements between the Debtors and any Released Party, (v) the negotiation, formulation or preparation of the Combined Plan and Disclosure Statement and any related agreements, instruments or other documents, (vi) the

performance, assumption, assignment, termination, or rejection of Executory Contracts and Unexpired Leases; (vii) the sale of the Debtors' assets pursuant to section 363 of the Bankruptcy Code or (viii) any other act or omission, transaction, agreement, event or other occurrence relating to the Debtors taking place on or before the Effective Date of this Combined Plan and Disclosure Statement.

C. Injunction

Except as expressly otherwise provided in the Combined Plan and Disclosure Statement or in an Order of the Bankruptcy Court, on the Effective Date of the Combined Plan and Disclosure Statement, all Entities or Persons that hold, have held or may hold or have asserted, assert or may assert Claims against or Equity Interests in the Debtors and their Estates shall be permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against the Post-Effective Date Debtors, their Estates or any of their property, whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such Claim or Equity Interest: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (ii) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (iii) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien; (iv) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person or Entity released under this Combined Plan and Disclosure Statement, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order,

whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Combined Plan and Disclosure Statement; and (v) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement or the Confirmation Order.

D. Liabilities to, and Rights of Governmental Units

Nothing in this Combined Plan and Disclosure Statement or Confirmation Order shall discharge, release, or preclude: (1) any liability to a Governmental Unit that is not a Claim; (2) any Claim of a Governmental Unit arising on or after the Confirmation Date; (3) any liability to a Governmental Unit on the part of any Entity other than the Debtors or Post-Effective Date Debtors; (4) any valid right of setoff or recoupment by a Governmental Unit; or (5) any criminal liability. Nothing in the Plan or Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence. The discharge and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar any Governmental Unit from, after the Effective Date, pursuing any police or regulatory action.

ARTICLE XIV.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases

Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all Executory Contracts and Unexpired Leases that exist between the Debtors and any Person or Entity shall be deemed rejected by the Debtors on the Confirmation Date and effective as of the Confirmation Date, except for any Executory Contract or Unexpired Lease (i) that has been assumed or

rejected pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date or (ii) as to which a motion for approval of the assumption or rejection of such Executory Contract or Unexpired Lease has been filed and served prior to the Confirmation Date. The Confirmation Order shall constitute an Order approving such rejection as of the Effective Date.

B. Debtors' Insurance Policies

Nothing in the Combined Plan and Disclosure Statement or the Confirmation Order alters the rights and obligations of the Debtors (and their Estates) and the Debtors' insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms or conditions thereof or diminishes or impairs the enforceability of the Insurance Policies.

ARTICLE XV.

CAUSES OF ACTION

A. Retention of Causes of Action

The Post-Effective Date Debtors expressly reserve all rights to prosecute any and all Claims and Causes of Action against any Entity or Person, except as otherwise expressly provided in the Combined Plan and Disclosure Statement. Unless any Claims or Causes of Action against an Entity or Person are expressly waived, relinquished, exculpated, released, compromised or settled in the Combined Plan and Disclosure Statement or a Bankruptcy Court Order, the Post-Effective Date Debtors expressly reserve all Claims and Causes of Action for later adjudication. Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise) or laches, shall apply to such Claims or Causes of Action upon, after or as a consequence of the Confirmation or Effective Date of the Combined Plan and Disclosure Statement.

B. Reservation of Rights

Except as specifically provided in the Combined Plan and Disclosure Statement or in the Confirmation Order, nothing contained in the Combined Plan and Disclosure Statement or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left unimpaired by the Combined Plan and Disclosure Statement. The Debtors shall have, retain, reserve and be entitled to assert all such claims, causes of action, rights of setoff or other legal or equitable defenses which they or any of them had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced, and all legal and equitable rights of the Debtors respecting any Claim left Unimpaired by the Combined Plan and Disclosure Statement may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced. The Plan Administrator's right to commence and prosecute Causes of Action shall not be abridged or materially altered in any manner by reason of Confirmation of the Combined Plan and Disclosure Statement. No defendant party to any Causes of Action brought by the Debtors or the Plan Administrator shall be entitled to assert any defense based, in whole or in part, upon Confirmation of the Combined Plan and Disclosure Statement, and Confirmation of the Combined Plan and Disclosure Statement shall not have any res judicata or collateral estoppel effect upon the commencement and prosecution of the Causes of Action.

ARTICLE XVI.

**CONDITIONS PRECEDENT TO AND OCCURRENCE OF
CONFIRMATION AND THE EFFECTIVE DATE**

A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation that must be satisfied or waived:

- (i) The Confirmation Order shall be reasonably acceptable in form and substance to the Debtors; and
- (ii) Any exhibits or schedules incorporated as part of the Combined Plan and Disclosure Statement shall be reasonably acceptable in form and substance to the Debtors.

B. Conditions Precedent to the Effective Date

The Combined Plan and Disclosure Statement shall not become effective unless and until the following conditions shall have been satisfied or waived by the Debtors:

- (i) Entry of the Confirmation Order;
- (ii) The Confirmation Order becomes a Final Order and
- (iii) There shall exist sufficient Available Cash to satisfy Administrative Expense Claims, Priority Tax Claims and Priority Non-Tax Claims which are Allowed Claims.

C. Establishing the Effective Date

The calendar date to serve as the Effective Date shall be a Business Day, on or promptly following the satisfaction or waiver of all conditions to the Effective Date, which date will be selected by the Debtors, after reasonable consultation with the Committee. On or within three (3) Business Days of the Effective Date, the Post-Effective Date Debtors shall file and serve a notice of occurrence of the Effective Date. Such notice shall contain, among other things, the Supplemental General Administrative Claims Bar Date, the deadline by which Professionals must file and serve any Professional Fee Claims and the deadline to file a Proof of

Claim relating to damages from the rejection of any Executory Contract or Unexpired Lease pursuant to the terms of the Combined Plan and Disclosure Statement.

ARTICLE XVII.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, following the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases as is legally permissible, including, without limitation, such jurisdiction as is necessary to ensure that the interests and purposes of the Combined Plan and Disclosure Statement are carried out. The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Combined Plan and Disclosure Statement pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (i) To determine the allowance, priority and classification of Claims to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
- (ii) To hear and determine pending applications for the assumption or rejection of Executory Contracts or Unexpired Leases, if any are pending, and the allowance of any Claims resulting therefrom;
- (iii) To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (iv) To issue such Orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by section 1142 of the Bankruptcy Code;
- (v) To consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

- (vi) To hear and determine all requests for compensation and reimbursement of expenses under sections 330, 331 or 503 of the Bankruptcy Code;
- (vii) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Combined Plan and Disclosure Statement;
- (viii) To recover all assets of the Post-Effective Date Debtors and property of the Post-Effective Date Debtors' Estates, wherever located;
- (ix) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including, without limitation, any request by the Plan Administrator for an expedited determination of tax under section 505(b) of the Bankruptcy Code);
- (x) To hear any other matter not inconsistent with the Bankruptcy Code;
- (xi) To issue such Orders as may be necessary or appropriate to expand or otherwise modify the powers and duties of the Plan Administrator;
- (xii) To enter a final decree closing the Chapter 11 Cases;
- (xiii) To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;
- (xiv) To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
- (xv) To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;
- (xvi) To determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement;

- (xvii) To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);
- (xviii) To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the General Bar Date, the Government Bar Date, the Administrative Claims Bar Date, the Amended Schedules Bar Date, the Rejection Bar Date, or the hearing on the approval of the Combined Plan and Disclosure Statement for the purpose of determining whether a Claim or Equity Interest is discharged or enjoined hereunder or for any other purpose; and
- (xix) To resolve any other matter or for any purpose specified in the Combined Plan and Disclosure Statement, the Confirmation Order, or any other document entered into in connection with any of the foregoing.

ARTICLE XVIII.

MISCELLANEOUS PROVISIONS

A. Books and Records

On the Effective Date, the Debtors' Books and Records shall be transferred to the Plan Administrator. After the Effective Date, the Plan Administrator shall be free, in his or her discretion to abandon, destroy or otherwise dispose of the Books and Records in compliance with applicable non-bankruptcy law, without the need for any other or further Order.

B. Transfer of Debtors' Assets

Except as otherwise provided herein, any assets that are property of the Debtors' Estates on the Effective Date including, without limitation, any Causes of Action, shall transfer to the Post-Effective Date Debtors on the Effective Date. Thereafter, the Plan Administrator may use, sell or dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or Bankruptcy Court approval. Except as specifically provided in the Combined Plan and Disclosure Statement or the Confirmation Order, as of the Effective Date, all

property of the Post-Effective Date Debtors shall be free and clear of any liens, Claims, encumbrances and interests of any kind.

C. Termination of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date shall terminate on the Effective Date, at which time the injunctions and stays set forth in this Combined Plan and Disclosure Statement shall take effect.

D. Exemption from Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Combined Plan and Disclosure Statement, shall not be subject to any stamp or similar tax.

E. Amendment or Modification of the Combined Plan and Disclosure Statement

Alterations, amendments or modifications of the Combined Plan and Disclosure Statement may be proposed in writing by the Debtors, at any time before the Confirmation Date, provided that the Combined Plan and Disclosure Statement, as altered, amended or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder. Prior to the Effective Date, the Debtors may make appropriate technical non-material modifications to the Plan or the Disclosure Statement without

further Order or approval of the Bankruptcy Court, provided that such technical modifications do not adversely affect the treatment of Holders of Claims or Equity Interests.

F. Severability

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Combined Plan and Disclosure Statement is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Equity Interests as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidability or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Combined Plan and Disclosure Statement and shall not require the re-solicitation of any acceptance or rejection of the Plan unless otherwise Ordered by the Bankruptcy Court.

G. Revocation or Withdrawal of the Combined Plan and Disclosure Statement

The Debtors reserve the right to revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date. If the Debtors revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date, then the Combined Plan and Disclosure Statement shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtors and the Estates.

H. Binding Effect

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims and the Holders of Equity Interests, and their respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under the Plan and whether or not such Holder has accepted the Plan.

I. Committee

On the Effective Date, the Committee shall be dissolved and its members released and discharged of any further duties and responsibilities and the retention or employment of the Committee's professionals shall also terminate, except that the Committee and its professionals may prepare, file and seek approval of their respective applications for final allowances of compensation and reimbursement of expenses. The professionals retained by the Committee and the members thereof will not be entitled to assert any fee or expense claims for any services rendered or expenses incurred in the service of the Committee after the Effective Date, other than in connection with final allowances of compensation and reimbursement of expenses.

J. Notices

All notices, requests and demands to or upon the Post-Effective Date Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Post-Effective Date Debtors:

Attn: James Patrick Carroll
Carroll Services LLC
4450 Bonita Beach Rd. Suite 9
Bonita Springs, FL 34134
Ph:617-899-9007
Fax: 239-913-6549

K. Revised Bankruptcy Rule 2002 Service List

After the Effective Date, any Entities or Persons that want to continue to receive notice in these Chapter 11 Cases must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002 no later than thirty (30) days after the Effective Date of the Combined Plan and Disclosure Statement; provided, however; that the United States Trustee shall be

excused from this requirement and shall remain on the Bankruptcy Rule 2002 service list. To the extent a renewed request is not timely filed with the Bankruptcy Court, the Post-Effective Date Debtors are authorized to limit notice and not include such Entities or Persons on any post-Effective Date Bankruptcy Rule 2002 service list.

L. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Combined Plan and Disclosure Statement provides otherwise, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

M. Headings

Headings are used in the Combined Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Combined Plan and Disclosure Statement for any other purpose.

N. Exhibits/Schedules

All exhibits and schedules to the Combined Plan and Disclosure Statement are incorporated into and are a part of the Combined Plan and Disclosure Statement as if set forth in full herein.

O. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

P. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed as an admission by any Entity with respect to any matter set forth herein.

Q. Successors and Assigns

The rights, benefits and obligations of any Person or Entity named or referred to in the Combined Plan and Disclosure Statement shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

R. Return of Deposits

Unless the Debtors have agreed otherwise in a written agreement or stipulation approved by the Bankruptcy Court, all deposits provided by the Debtors to any Person or Entity at any time shall be returned to the Post-Effective Date Debtors within twenty (20) days after the Effective Date, without deduction or offset of any kind.

S. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or Holders of Claims or Equity Interests before the Effective Date.

T. Implementation

The Debtors, the Post-Effective Date Debtors and Plan Administrator, as applicable, shall take all steps, and execute all documents, including appropriate releases,

necessary to effectuate the provisions contained in this Combined Plan and Disclosure Statement.

U. Inconsistency

In the event of any inconsistency among the Combined Plan and Disclosure Statement and any other instrument or document created or executed pursuant to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall govern.

V. Cancellation of Equity Interests

On the Effective Date, all existing Equity Interests shall, without further act or action by any party, be cancelled, annulled, and extinguished, and any Certificates representing such cancelled, annulled and extinguished Equity Interests shall be null and void.

W. Authorization of Plan Administrator to Wind-Up Affairs of the Debtors

The Plan Administrator shall be authorized and empowered to execute, deliver, file and record such contracts, instruments, assignments, conveyances, bills of sale, releases, Certificates and any other agreements or documents and take such action as is reasonably necessary or appropriate to effectuate and implement the terms and conditions of this Consolidated Plan and Disclosure Statement and wind-up the affairs of the Post-Effective Date Debtors, without the need for action by the board of directors or other managing body of the Debtors or Post-Effective Date Debtors.

X. Dissolution of the Debtors

After the Effective Date, the Post-Effective Date Debtors shall be dissolved. The Post-Effective Date Debtors shall exist only for a period of time necessary to facilitate or complete the recovery and liquidation of the Post-Effective Date Debtors' remaining assets, and the Distribution of their proceeds. The Plan Administrator shall not unduly prolong the duration

of the Post-Effective Date Debtors and shall at all times endeavor to resolve, settle or otherwise dispose of all assets in accordance with the terms hereof and shall dissolve the Post-Effective Date Debtors as soon as is reasonably practicable.

In connection with and following the closing of the Chapter 11 Cases, the Plan Administrator and the Post-Effective Date Debtors are authorized (a) to take any and all actions necessary to effect the Post-Effective Date Debtors' dissolution for all purposes under applicable state law; and (b) to file any required, final federal, state and local tax returns and to take such other action as shall be necessary or appropriate to effect a final determination of any amounts of post-Petition Date federal, state or local taxes owed by the Debtors or Post-Effective Date Debtors.

Y. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Combined Plan and Disclosure Statement, the provisions of this Combined Plan and Disclosure Statement shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Combined Plan and Disclosure Statement and in these Chapter 11 Cases. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Combined Plan and Disclosure Statement and the Chapter 11 Cases, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estates and all Holders of Claims and Equity Interests against the Debtors.

Z. Request for Expedited Determination of Taxes

The Plan Administrator shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

Dated: August 1, 2017

Bostwick Laboratories, Inc.
Bostwick Laboratories Holdings, Inc.



By: James Patrick Carroll
Title: Chief Restructuring Officer

EXHIBIT A
CAUSES OF ACTION LIST

Causes of Action

- All actual or potential avoidance actions pursuant to any applicable section of the Bankruptcy Code including, without limitation, sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, arising from any transaction involving or concerning the Debtors;
- All actual actions or potential actions, whether legal, equitable or statutory in nature, against customers, vendors, suppliers or contract counterparties, including without limitation, any and all claims relating to breach of contract, deposits, overpayments, accounts receivable, improper setoff, warranty, indemnity, retention of double payments, retention of misdirected wires, deductions owing or improper deductions taken, or any other claim concerning or arising out of the customer, vendor, supplier or contractual relationship;
- All actual or potential actions, whether legal, equitable or statutory in nature, against landlords, lessees, sublessees, or assignees arising from various leases, subleases and assignment agreements relating thereto, including, without limitation, any and all claims for unpaid rent, overcharges relating to taxes, common area maintenance and other similar charges;
- All actual or potential actions, whether legal, equitable or statutory in nature, against the Debtors' current or former insurance carriers including, without limitation, any and all claims relating to unpaid reimbursements and claims, overpayment of premiums and fees, breach of contract, indemnity obligations or coverage;
- Any and all rights to payment against any taxing authority or other Governmental Unit including, without limitation, any and all claims for any tax refunds, credits, overpayments, recoupments or offsets that may be due and owing to the Debtors for taxes that the Debtors paid or may have paid to any such taxing authority or other Governmental Unit;
- All actions or potential actions, whether legal, equitable or statutory in nature, relating to deposits or other amounts owed by any creditor, lessor utility, supplier, vendor, landlord, sub-lessee, assignee or other Person or Entity;
- All actions or potential actions, whether legal, equitable or statutory in nature, relating to environmental and product liability matters;
- All actions or potential actions, whether legal, equitable or statutory in nature, arising out of, or relating to, the Debtors' intellectual property rights;
- All actual or potential actions against any of the prepetition directors, officers, employees, attorneys, financial advisors, accountants, investment bankers, agents and representatives of the Debtors, except actions expressly released under the Combined Plan and Disclosure Agreement, including, without limitation, any and all claims for breaches of fiduciary duty, breaches of loyalty, breaches of the duty of good faith, negligent mismanagement, wasting of corporate assets, and diversion of corporate opportunity, including, without limitation any and all claims against Dr. David G.

Bostwick and anyone currently or previously associated with, affiliated with or employed by Metalmark;

- All actual or potential actions, whether legal, equitable or statutory in nature, against all Entities, except actions expressly released under the Combined Plan and Disclosure Statement, arising out of, or in connection with, any of the Debtors' prepetition management, businesses, operations and/or reporting of financial or other information;
- All actions or potential actions, whether legal, equitable or statutory in nature, against any of the Debtors' current or former professionals, except actions expressly released or exculpated under the Combined Plan and Disclosure Statement, including without limitation any and all claims for breach of fiduciary duty, breach of contract, negligence or professional misconduct malpractice, or other tortious conduct;
- All rights against any Entity, including any shareholder or prepetition member of the Debtor's board of directors and/or officers, for subordination of their Claims pursuant to section 510 of the Bankruptcy Code or against any Entity that has agreed to subordination of their claim pursuant to section 510 of the Bankruptcy Code;
- All actions or potential actions against the prepetition members of the Debtors' board of directors and/or officers, except actions expressly released or exculpated under the Combined Plan and Disclosure Statement;
- All actual or potential actions, whether legal, equitable or statutory in nature, to recover amounts awarded to employees (except for amounts authorized by order of the Bankruptcy Court or required by applicable non-bankruptcy law, or related to an action expressly released under the Combined Plan and Disclosure Statement) under the terms of any prepetition employment, severance agreement, change-in-control agreement, bonus arrangement or other agreement governing, arising out of or related to the employment relationship;
- All actual or potential contract and tort actions that may exist or may subsequently arise, except actions expressly released under the Combined Plan and Disclosure Statement; and
- All actual or potential actions whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors' businesses or operations, except actions expressly released under the Combined Plan and Disclosure Statement.
- All actual or potential actions, whether legal, equitable or statutory in nature, against any of the (i) Debtors' Insiders, including without limitation Metalmark and (ii) affiliates (as such term is defined in section 101(2) of the Bankruptcy Code) of the Debtors' Insiders, including without limitation any and all claims for breach of fiduciary duty, breach of contract, negligence, unjust enrichment, fraudulent transfers, common law fraud or any other tortious conduct.

EXHIBIT B
LIQUIDATION ANALYSIS

Bostwick Laboratories, Inc. et al
Liquidation Analysis

(000's)	Estimated Proceeds Available For Distribution			
	Chapter 11 Plan of Liquidation		Chapter 7 Liquidation	
	Low	High	Low	High
<u>I. Statement of Assets:</u>				
Available Cash on Hand:	\$ 3,073	\$ 3,073	\$ 3,073	\$ 3,073
Chapter 5 Causes of Action	\$ 633	\$ 1,557	\$ 317	\$ 633
Gross Available Assets	\$ 3,706	\$ 4,630	\$ 3,390	\$ 3,706
Remaining Expenses:				
Accrued - Unpaid Operating Expenses & Professional Fees	\$ 659	\$ 659	\$ 659	\$ 659
Projected Professional Fees	895	895	1,195	1,295
Projected Ch 7 Trustee Fees	-	-	118	118
Net Estimated Available Assets	\$ 2,152	\$ 3,076	\$ 1,418	\$ 1,634
<u>II. Distribution of Assets</u>				
Estimated Secured Claims Recovery	\$ 82 100.0%	\$ 188 100.0%	\$ 188 100.0%	\$ 188 100.0%
Estimated Recovery Before Administrative Claims	\$ 2,070	\$ 2,888	\$ 1,230	\$ 1,446
Estimated Administrative Claims Recovery	\$ 352 100.0%	\$ 352 100.0%	\$ 352 100.0%	\$ 352 100.0%

Estimated Recovery Before Priority Claims	<div> <div>\$</div> <div>1,718</div> </div> <div> <div>\$</div> <div>2,536</div> </div>		<div> <div>\$</div> <div>878</div> </div> <div> <div>\$</div> <div>1,094</div> </div>	
Estimated Priority Claims Recovery	<div> <div>\$</div> <div>332</div> </div> <div>100.0%</div>	<div> <div>\$</div> <div>392</div> </div> <div>100.0%</div>	<div> <div>\$</div> <div>392</div> </div> <div>55.0%</div>	<div> <div>\$</div> <div>392</div> </div> <div>55.0%</div>
Estimated Cash Available Before Unsecured Claims	<div> <div>\$</div> <div>1,386</div> </div> <div> <div>\$</div> <div>2,144</div> </div>		<div> <div>\$</div> <div>486</div> </div> <div> <div>\$</div> <div>702</div> </div>	
Estimated Unsecured Claims ¹ Recovery	<div> <div>\$</div> <div>43,500</div> </div> <div>3.186%</div>	<div> <div>\$</div> <div>54,046</div> </div> <div>3.967%</div>	<div> <div>\$</div> <div>54,046</div> </div> <div>0.899%</div>	<div> <div>\$</div> <div>56,546</div> </div> <div>1.241%</div>

¹ The estimated unsecured claims does not include Claims arising from the Debtors' rejection of Executory Contracts or Unexpired Leases pursuant to section 365 of the Bankruptcy Code as the amount of such Claims is currently unknown and any estimate at this time would be purely speculative.